

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ARNE PETTERSEN

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Unincorporated Business Taxes :
Taxes under Article(s)/ 23 of the :
Tax Law for the Year(s) or Period(s) 1969, :
1970, 1971, 1972 and 1973.

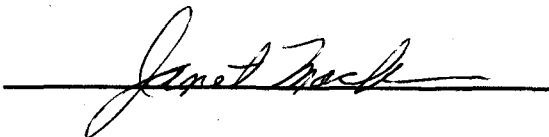
State of New York
County of Albany

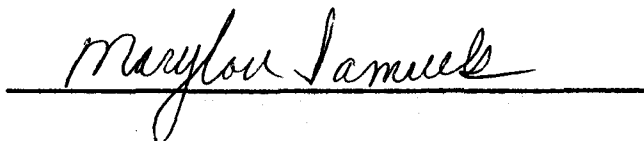
MARYLOU SAMUELS, being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 1st day of December, 1976, she served the within
Notice of Decision by (certified) mail upon Arne Pettersen
(~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. Arne Pettersen
365 Hollywood Avenue
Tuckahoe, New York 10707
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the (~~representative~~
of ~~the~~) petitioner herein and that the address set forth on said wrapper is the
last known address of the (~~representative of~~) the petitioner.

Sworn to before me this

1st day of December, 1976





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

• ARNE PETTERSEN

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Unincorporated Business Taxes :
Taxes under Article(s) 23 of the :
Tax Law for the Year(s) or ~~Period(s)~~ :
1969, 1970, 1971, 1972 and 1973.

State of New York
County of Albany

MARYLOU SAMUELS, being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 1st day of December, 1976, she served the within
Notice of Decision by (certified) mail upon Joseph M. Prizzi, C.P.A.

(representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed

as follows: Mr. Joseph M. Prizzi, C.P.A.
Harwood Building
Scarsdale, NY 10583

and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the (representative
of the) petitioner herein and that the address set forth on said wrapper is the
last known address of the (representative of the) petitioner.

Sworn to before me this

1st day of December, 1976.

Janet Mack

Marylou Samuels



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N.Y. 12227

ADDRESS YOUR REPLY TO

December 1, 1976

TELEPHONE: (518) 457-3850

Mr. Arne Pettersen
365 Hollywood Avenue
Tuckahoe, New York 10707

Dear Mr. Pettersen:

Please take notice of the **DECISION**
of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to
Section(7) 722 of the Tax Law, any
proceeding in court to review an adverse deci-
sion must be commenced within **4 months**
from the date of this notice.

Inquiries concerning the computation of tax
due or refund allowed in accordance with this
decision or concerning any other matter relative
hereto may be addressed to the undersigned. They
will be referred to the proper party for reply.

Very truly yours,

Frank J. Puccia
Supervisor of Small
Claims Hearings

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
ARNE PETTERSEN : DECISION
for Redetermination of a Deficiency or :
for Refund of Unincorporated Business :
Taxes under Article 23 of the Tax Law :
for the Years 1969, 1970, 1971, 1972 :
and 1973. :

Petitioner, Arne Pettersen, 365 Hollywood Avenue, Tuckahoe, New York 10707, has filed a petition for redetermination of a deficiency or for refund of unincorporated business taxes under Article 23 of the Tax Law for the years 1969, 1970, 1971, 1972 and 1973. (File No. 3-49601536).

A small claims hearing was held August 18, 1976 at 10:45 A.M. at the offices of the State Tax Commission, Two World Trade Center, New York, New York, before Harry Huebsch, Hearing Officer. The petitioner appeared with his representative, Joseph Prizzi, C.P.A. The Income Tax Bureau appeared by Peter Crotty, Esq., (William Fox, Esq., of counsel).

ISSUE

Did income in the amount of \$13,500.00 per year received by petitioner, Arne Pettersen, during the years 1969, 1970, 1971, 1972 and 1973 constitute severance and retirement pay for past services rendered or was it compensation for the performance of consulting services and as such subject to unincorporated business tax.

FINDINGS OF FACT

1. Petitioner, Arne Pettersen, filed New York State income tax returns for the years 1969, 1970, 1971, 1972 and 1973. He did not file unincorporated business tax returns for said years. On each of the returns, petitioner, Arne Pettersen, reported \$13,500.00 as consultant business income. The Income Tax Bureau issued a Notice of Deficiency dated September 29, 1975 holding this income subject to unincorporated business tax. The deficiency was in the amount of \$1,595.00 unincorporated business tax due plus \$658.76 penalty plus \$349.47 interest for a total sum of \$2,603.23.

2. Petitioner, Arne Pettersen, had been employed by the associated companies, Fearnley & Eger Inc. and Packet Shipping Corp. for 37 years. These corporations did not have retirement pension plans for employees. On June 19, 1964, a written retirement agreement was signed by the parties involved. The agreement provides that the petitioner, Arne Pettersen, resign and retire as President, Director and employee of Fearnley & Eger Inc. and as Vice-President, Director and employee of Packet Shipping Corp., receive his full salary for the first two years and then \$13,500.00 each year for the next eight years, act as a consultant when requested to do so without additional compensation, but be reimbursed for expenses incurred while so acting, would not compete with his former employer, either directly or indirectly; and that in the event of his death, the payments would continue to his estate until the end of the agreement period.

3. Petitioner, Arne Pettersen, contended that the provision in the agreement calling for consulting services was to assure that he would make himself available to clear up any matters unresolved at the time of his departure. He submitted a letter in corroboration of his contention from the law firm which represented his former employers in drawing up the agreement.

4. Petitioner, Arne Pettersen, never performed or was called upon to perform any consultation services for his former employers.

CONCLUSIONS OF LAW

A. That the income received from Fearnley & Eger Inc. and Packet Shipping Corp. for the years 1969, 1970, 1971, 1972 and 1973 was severance and retirement pay for 37 years of prior service.

B. That petitioner, Arne Pettersen, was not engaged in the carrying on of an unincorporated business as a consultant in accordance with the meaning and intent of section 703 of the Tax Law.

C. That the petition of Arne Pettersen is granted and the Notice of Deficiency dated September 29, 1975 is cancelled.

DATED: Albany, New York
December 1, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER