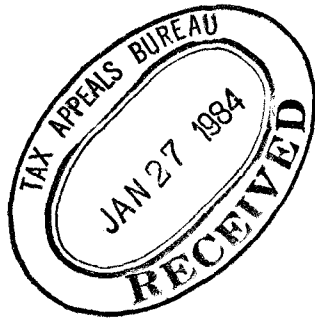


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STATE OF NEW YORK
State Tax Commission
TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N. Y. 12227

Howard B. Stevens
200 Park Ave.
New York, NY 10166



CERTIFIED

P 440 976 679

MAIL

STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

January 18, 1984

Harold H. Buttner
242 Main St.
Southport, CT 06490

Dear Mr. Buttner:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 690 & 722 of the Tax Law, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only under Article 78 of the Civil Practice Law and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance
Law Bureau - Litigation Unit
Building #9, State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Howard E. Stevens
200 Park Ave.
New York, NY 10166
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
HAROLD H. BUTTNER
for Redetermination of a Deficiency or
for Refund of Unincorporated Business Tax :
under Article 23 of the Tax Law for the
Years 1962, 1963 and 1964. :

DECISION

Petitioner, Harold H. Buttner, 242 Main Street, Southport, Connecticut 06490, filed a petition for redetermination of a deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the years 1962, 1963 and 1964 (File No. 01035).

A formal hearing was held before William J. Dean, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on August 10, 1977 at 9:15 A.M. Petitioner appeared by Howard G. Acker. The Audit Division appeared by Peter Crotty, Esq. (Laurence E. Stevens, Esq., of counsel).

ISSUES

I. Whether petitioner's activities as a consultant constituted the carrying on of an unincorporated business.

II. Whether the income received by petitioner as a corporate director constituted compensation received as an employee within the meaning and intent of section 703(b) of the Tax Law.

III. Whether petitioner maintained a regular place of business outside New York State thus entitling him to allocate the excess of his unincorporated business gross income over his unincorporated business deductions.

FINDINGS OF FACT

1. Petitioner, Harold H. Buttner, timely filed a resident New York State combined income tax return for the years 1962, 1963 and 1964 on which he indicated that his occupation was that of a consulting engineer.

2. On September 30, 1968, the Audit Division issued a Notice of Deficiency for said years asserting unincorporated business tax of \$1,852.48, plus interest of \$518.55, for a total of \$2,371.03. Said Notice was issued on the ground that petitioner's activities as a consulting engineer were deemed subject to unincorporated business tax.

3. Petitioner graduated from the University of California in 1915 and shortly thereafter was employed, as an engineer, by International Telephone and Telegraph Corporation. At the time he retired from said corporation in 1957, he held the position of Vice President and Technical Director. Petitioner agreed to make himself available to ITT for consultation and/or advice at a fee of \$6,000.00 per annum. He also rendered technical and engineering evaluation services to the Wilmington Group, Inc. ("Wilmington") and for Waddell & Reed, Inc. ("Waddell") which were investment advisors for the United Fund, Inc. Wilmington was merged into Waddell in August of 1962. As investment advisors, both firms needed advice on the technical knowledge and achievements of companies in which they were interested. This represented one important segment of an investment decision. These companies, located in the State of Delaware, used petitioner's services because of his technical knowledge as an engineer and for the purpose of evaluating the expertise of their companies from an engineering point of view. The services petitioner rendered on behalf of Wilmington and Waddell were entirely within the State of Delaware.

4. Petitioner was invited to become a director and a consultant of Hewlett-Packard Company ("Hewlett") in 1957 and has served in both capacities continuously since that time. He was chosen as a consultant because of his experience in the field of communication engineering. He was consulted by various divisions of said company regarding engineering and technical matters. Petitioner also received director fees from Hewlett, from three of its subsidiaries, and from Lunn Laminates. As a director of Hewlett, petitioner was paid on a per meeting basis as were the other directors. He did not receive director fees in his capacity as a consultant.

5. Petitioner submitted the following schedule with his petition showing how his net business income was determined.

<u>SOURCE</u>	<u>1962</u>	<u>1963</u>	<u>1964</u>
International Telephone & Telegraph Advisory Services	6,000	6,000	6,000
Consulting Fees:			
Hewlett-Packard (Calif.)	15,400	16,800	16,800
Wilmington Group (Delaware)	8,400		
Waddell & Reed	5,250	9,900	
Director Fees:			
Hewlett-Packard	1,000	800	1,000
Boonton Radio Corp.	200		
F. L. Moseley Co.	300		
Sanborn Co.	300	300	
Lunn Laminates	80		
Gross Receipts	<u>36,930</u>	<u>33,800</u>	<u>23,800</u>
Deductions	<u>7,641</u>	<u>6,442</u>	<u>5,467</u>
Net Income	<u>29,289</u>	<u>27,358</u>	<u>18,333</u>

6. Petitioner asserted that both the consulting fees and the directors fees received from Hewlett and its subsidiaries were for services rendered solely in the State of California. Hewlett provided petitioner with an office in California. Petitioner spent 119 days in California in 1962, 131 days in 1963 and 117 days in 1964. When in California he worked out of his office in

Hewlett's facility. Petitioner also asserted that the use of the direct and/or separate accounting method is proper since California income and expenses were clearly identifiable and that use of said method was permitted in the Matter of Piper, Jaffray & Hopwood v. State Tax Commission, 42 A.D.2d 381.

7. Petitioner acknowledges that both Wilmington and Waddell did not provide office space but asserted that the income he received from both firms should be allocated to the State in which the services were rendered.

CONCLUSIONS OF LAW

A. That the services rendered by petitioner Harold H. Buttner on behalf of International Telephone & Telegraph, Hewlett-Packard, Wilmington Group, and Waddell & Reed were those of an independent contractor and not an employee; therefore, his activities as a consultant constitute the carrying on of an unincorporated business within the meaning and intent of section 703 of the Tax Law and 20 NYCRR 203.10.

B. That the office space provided by Hewlett-Packard (Finding of Fact "6", supra) was used by petitioner with such regularity and continuity so as to constitute his place of business outside New York State during the years at issue and the utilization of the direct accounting method in determining the net income allocable to the State of California is proper (Matter of Piper, Jaffray & Hopwood et al v. State Tax Commission, 42 A.D.2d 381; 348 N.Y.S.2d 242). Petitioner did not maintain a regular place of business without New York State in connection with the services rendered for International Telephone & Telegraph, Wilmington Group and Waddell & Reed. Accordingly, he is required to allocate all of the excess of his unincorporated business gross income over his unincorporated business deductions connected with these services within the

meaning and intent of section 707(a) of the Tax Law and 20 NYCRR 207.2(b) (Giordano v. State Tax Commission, 52 A.D.2d 691, 382 N.Y.S. 2d 576).


C. That the director fees received from Hewlett-Packard Company and from other companies constituted compensation received as an employee within the meaning and intent of section 703(b) of the Tax Law and is not subject to unincorporated business tax (see Matter of Martino v. State Tax Commission, 89 A.D.2d 683).

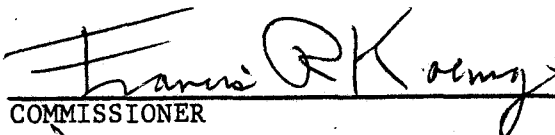
D. That the petition of Harold H. Buttner is granted to the extent indicated in Conclusions of Law "B" and "C", supra; that the Audit Division is directed to modify the Notice of Deficiency issued September 30, 1968; and that, except as so granted, the petition is in all other respects denied.


DATED: Albany, New York

STATE TAX COMMISSION

JAN 18 1984


PRESIDENT


COMMISSIONER


COMMISSIONER