

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
H. PRESTON PETERS AND VIRGINIA C. PETERS & :
THE ESTATE OF H. PRESTON PETERS (FIRST :
NATIONAL CITY BANK OF N.Y., EXECUTOR)
For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article (9) 22 of the :
Tax Law for the Year(s) ~~XXXXXX~~ :
1968, 1969, 1970 and 1971.

AFFIDAVIT OF MAILING

State of New York
County of Albany

Marsina Donnini, 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 26 day of August, 1977, she served the within
Notice of Decision by (certified) mail upon Virginia C. Peters

~~XXXXXX~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Estate of H. Preston Peters & Virginia C. Peters
c/o First National City Bank of New York, Exec. and
Virginia C. Peters, Individually
55 Wall Street
New York, New York
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 ~~XXXXXX~~
~~XXXXXX~~ petitioner herein and that the address set forth on said wrapper is the
last known address of the ~~XXXXXX~~ petitioner.

Sworn to before me this

26th day of August, 1977.

Janet Mack

Marsina Donnini

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
H. PRESTON PETERS AND VIRGINIA C. PETERS &
THE ESTATE OF H. PRESTON PETERS (FIRST
NATIONAL CITY BANK OF N.Y., EXECUTOR)
For a Redetermination of a Deficiency or
a Revision of a Determination or a Refund
of Personal Income
Taxes under Article (6) 22 of the
Tax Law for the Year(s) ~~XXXXXX~~
1968, 1969, 1970 and 1971.

AFFIDAVIT OF MAILING

State of New York
County of Albany

Marsina Donnini, 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 26 day of August, 1977, she served the within Notice of Decision by (certified) mail upon Joseph R. Satz, Esq. (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Joseph R. Satz, Esq.
Forsythe, LeViness & Pearson
375 Park Avenue
New York, New York 10022
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

26th day of August, 1977.

Marsina Donnini

Janet Mack



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

JAMES H. TULLY JR., PRESIDENT
MILTON KOERNER
THOMAS H. LYNCH

August 26, 1977

**Estate of H. Preston Peters & Virginia C. Peters
c/o First National City Bank of New York, Executor &
Virginia C. Peters, Individually
55 Wall Street
New York, New York**

Gentlemen:

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 ~~XX~~ **690** of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws 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 the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,

**Paul B. Coburn
Supervising Tax
Hearing Officer**

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
H. PRESTON PETERS AND VIRGINIA C. PETERS	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	DECISION
Article 22 of the Tax Law for the Years	:	
1968 and 1969.	:	

In the Matter of the Petition	:
of	:
VIRGINIA C. PETERS	:
and	:
THE ESTATE OF H. PRESTON PETERS (FIRST	:
NATIONAL CITY BANK OF NEW YORK, EXECUTOR)	:
for Redetermination of a Deficiency or for	:
Refund of Personal Income Tax under Article 22	:
of the Tax Law for the Years 1970 and 1971.	:

Petitioners, H. Preston Peters and Virginia C. Peters, 4 Perkins Road, Greenwich, Connecticut 06830, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1968 and 1969. Petitioners, Virginia C. Peters and The Estate of H. Preston Peters (First National City Bank of New York, Executor) 4 Perkins Road, Greenwich,

Connecticut 06830, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1970 and 1971. (File No. 01230).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 26, 1977 at 9:15 A.M. Petitioners appeared by Joseph R. Satz, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Alexander Weiss, Esq., of counsel).

ISSUE

Whether the income earned from the days worked at home in Connecticut by H. Preston Peters was allocable to sources outside New York State within the meaning and intent of section 632 of the Tax Law and 20 NYCRR 131.16 for the years 1968, 1969, 1970 and 1971.

FINDINGS OF FACT

1. Petitioners, H. Preston Peters and Virginia C. Peters, filed a New York State nonresident income tax return in 1968. They listed Federal income from wages as \$75,000.00, while allocating \$60,732.00 of that to New York State by deducting 39 workdays, out of a total of 205 workdays, as days worked outside New York State.

2. Petitioners, H. Preston Peters and Virginia C. Peters, filed a New York State nonresident income tax return for the year

1969. They listed Federal income from wages as \$75,000.00, while allocating \$48,990.00 of that to New York State by deducting 77 workdays, out of a total of 222 workdays, as days worked outside New York State.

3. Petitioners, H. Preston Peters and Virginia C. Peters, filed a New York State nonresident income tax return for the year 1970. They listed Federal income from wages as \$75,000.00, while allocating \$52,652.00 of that to New York State by deducting 59 workdays, out of a total of 198 workdays, as days worked outside New York State.

4. Petitioners, H. Preston Peters and Virginia C. Peters, filed a New York State nonresident income tax return for the year 1971. They listed Federal income from wages as \$75,000.00, while allocating \$10,245.00 of that to New York State by deducting 158 workdays, out of a total of 183 workdays, as days worked outside New York State.

5. On December 27, 1971, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, H. Preston Peters and Virginia C. Peters, imposing additional personal income tax for the years 1968 and 1969, consisting of a deficiency of \$828.44, plus \$134.18 in interest, and \$2,768.23, plus \$282.28 in interest, respectively, upon the grounds that time spent at a taxpayer's home is not recognized as a proper basis for allocation of income from wages to sources outside of New York State.

6. On April 19, 1973, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, Virginia C. Peters and The Estate of H. Preston Peters (First National City Bank of New York, Executor), imposing additional personal income tax for the years 1970 and 1971, consisting of deficiencies of \$2,862.74, plus \$345.39 in interest, and \$7,293.68, plus \$442.36 in interest, respectively, upon the grounds that days worked at home are not considered days worked outside New York State, and as such are not allowed as deductions from income from New York State sources.

7. Petitioner, H. Preston Peters, was employed as chief executive or "key man" for Peters, Griffin and Woodward, Inc. (PGW), New York, New York, for all the years in issue. PGW sold television spot time for their clients television stations. Petitioner's activity was essential to keeping these clients with PGW, and he was involved in much of the client contact.

8. Petitioner, H. Preston Peters, was suffering from a progressively degenerative disease of the spine during the period in issue. Since this illness partially incapacitated him, and he was unable to travel frequently, petitioner used an office set up in his home on days that he could not travel to his office at PGW in New York during the period in issue.

9. On June 16, 1969, by resolution of the Board of Directors, PGW authorized petitioner, H. Preston Peters, to open an office

in his home because of his difficulty in traveling to New York. The Board of Directors felt that this would prevent the loss of a significant amount of income from the absence of petitioner, H. Preston Peters.

10. A tie-line was installed in the Connecticut home of petitioner, H. Preston Peters. This and the travel expenses of petitioner's secretary to and from the home of petitioner were paid for by PGW during the period in issue.

11. Board of Directors meetings of PGW were frequently held in the home of petitioner, H. Preston Peters, during the period in issue.

CONCLUSIONS OF LAW

A. That days worked outside New York State in his home in Connecticut by petitioner, H. Preston Peters, in the years 1968, 1969, 1970 and 1971, required by reason of his physical condition were by reason of his necessity and not for the actual necessity of the employer as distinguished from convenience within the meaning and intent of section 632 of the Tax Law and 20 NYCRR 131.16.

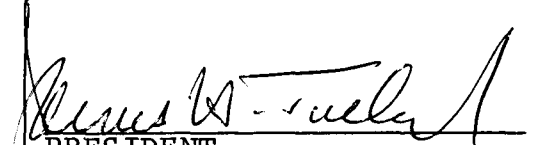
B. That the petition of H. Preston Peters and Virginia C. Peters is denied and the Notice of Deficiency issued December 27, 1971 is sustained.

C. That the petition of Birginia C. Peters and The Estate of H. Preston Peters (First National City Bank of New York, Executor) is denied and the Notice of Deficiency issued April 19, 1973 is sustained.

DATED: Albany, New York

August 26, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER