

STATE OF NEW YORK
STATE TAX COMMISSION

Foster
UBT
1970

In the Matter of the Petition

of

HY FOSTER AND ANNE FOSTER

For a Redetermination of a Deficiency or
a Refund of Unincorporated Business
Taxes under Article(s) 23 of the
Tax Law for the (Year(s) 1962

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

State of New York
County of Albany

Claire A. Draves, 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 30th day of November, 1970, she served the within Notice of Decision (or Determination) by (certified) mail upon Seymour S.

Seiden CPA (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Seymour S. Seiden CPA
386 Park Avenue, South
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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative of) 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

30th day of November, 1970.

James Wright

Claire A. Draves

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

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For a Redetermination of a Deficiency or
a Refund of Unincorporated Business;
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Tax Law for the (Year(s) 1962

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OF NOTICE OF DECISION
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State of New York
County of Albany

Claire A. Draves, 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 30th day of November, 1970, she served the within Notice of Decision (or Determination) by (certified) mail upon HY Foster and Anne Foster (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: HY Foster and Anne Foster
32 Ridge Drive
Westbury, 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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative of) 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

30th day of November, 1970.

John Wright

Claire A. Draves

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :

of :

HY FOSTER and ANNE FOSTER : DECISION

for a Redetermination of a Deficiency :
or for Refund of Unincorporated Busi- :
ness Tax under Article 23 of the Tax :
Law for the Year 1962 :

The taxpayers having filed a petition pursuant to Sections 722 and 689 of the Tax Law for a redetermination of a deficiency dated December 13, 1965, of unincorporated business tax imposed by Article 23 of the Tax Law due for the year 1962 and a hearing having been duly held before Nigel G. Wright, Hearing Officer, and the record having been duly examined and considered,

The State Tax Commission hereby

FINDS:

1. The sole issue in this case is whether the taxpayer, Hy Foster, is wholly or partially exempt from the unincorporated business tax by reason of being an employee or by reason of activities so incidental as not to constitute a business. His wife, Anne, was not involved in his income-producing activities. It was agreed that \$2479.43 representing deductions disallowed by a Federal audit change should be also disallowed for unincorporated business tax purposes.

2. The deficiency in issue is for the sum of \$556.01 plus interest.

3. Mr. Foster is a salesman representing primarily Delmonico International Corporation of Maspeth, New York, a distributor of refrigerators and other major appliances. During the taxable year about 49% of his gross sales were for Delmonico. About 44% of his gross sales were for three other firms selling small office refrigerators, radios, and tape recorders, all non-competitive with Delmonico. About 7 % of his gross sales were for four other firms.

4. Taxpayer sold only to chain stores with headquarters in the metropolitan New York City area. He was assigned prospects by Delmonico and had 25 or 30 "key accounts". He could not solicit other business because territories had been assigned to other salesmen. He had to report to them frequently, almost daily. He used Delmonico's telephone and stationery. He had to visit the branches of the chain stores. His duties included instructing retail personnel and handling complaints received by the retail stores.

5. Taxpayer was on a straight commission basis for both Delmonico and the other wholesalers. In 1962 no amounts were withheld by any company from commissions due Mr. Foster for Federal Income Tax or Social Security Tax.

6. Taxpayer has no business stationery of his own. He did have space in the basement of his house where he did some paper work.

7. Prior to 1962 taxpayer's experience has been as a sales manager for retail chain stores. The year 1962 was his first year selling for wholesalers. He asserts that he represented sidelines because of his own demands that he be able to earn a sufficient income while building accounts for Delmonico. In 1964 he started representing Delmonico only and received a guaranteed draw and Delmonico withheld taxes on the amount of the guaranteed draw.

8. The taxpayer did not solicit customers for his sidelines other than the customers of Delmonico. He estimates that only 10% of his time was spent on sideline business. Taxpayer made no attempt to prove the amount of expenses allocable to his sideline business.

9. The taxpayers sideline business was not isolated, incidental or casual and had sufficient continuity, frequency and regularity so as to constitute the carrying on of a business.

Upon the foregoing findings and all the evidence in the case,
The State Tax Commission hereby

DECIDES:

A. The taxpayer, Hy Foster, was an employee of Delmonico International Corporation during the tax year in question. He was an independent contractor with respect to the other companies he represented. His wife, Anne, is not liable for unincorporated business tax.

B. The notice of deficiency is erroneous in part and is redetermined to be \$374.58 together with such interest, if any, as may be lawfully due pursuant to Section 684 of the Tax Law.

DATED: Albany, New York
November 27, 1970

STATE TAX COMMISSION

COMMISSIONER

Bruce Newley

COMMISSIONER

Milton Koerner

COMMISSIONER



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A
STATE CAMPUS
ALBANY, N. Y. 12226

AREA CODE 518
457-2655, 6, 7

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

STATE TAX COMMISSION

NORMAN F. GALLMAN, ACTING PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

ADDRESS YOUR REPLY TO

Albany, New York

November 30, 1970

HY Foster & Anne Foster
32 Ridge Drive
Westbury, New York

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

Please take further notice that pursuant to **Section #722** of
the Tax Law any proceeding in court to review an adverse decision
must be commenced within **4 Months** after
the date of this notice.

Any inquiries concerning the computation of tax due or refund allowed
in accordance with this decision or concerning any other matter relat-
ing hereto may be addressed to the undersigned. These will be referred
to the proper party for reply.

Very truly yours,

Nigel G. Wright
HEARING OFFICER

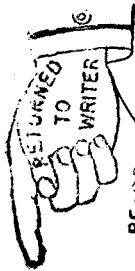
cc Petitioner's Representative
Law Bureau

STATE OF NEW YORK
Department of Taxation and Finance

STATE CAMPUS
ALBANY, N. Y. 12226

Notice Delivered
Date 12-19-70
By [Signature]

*NOV 4-70
12-19-70
pk*



REASON CHECKED

- Addressee Refused
- Unknown
- Insufficient address
- Moved, left no address
- No such post office in State
- No postmark in this envelope

~~HY Foster & Anne Foster
32 Ridge Drive
Westbury, New York~~

1st Notice.....
2nd Notice.....
Final Notice.....
Return DEC 19 1970

CERTIFIED
No 237694
MAIL

HICKSVILLE, NY
PM 1
20 DEC
1970



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STATE TAX COMMISSION

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