

STATE OF NEW YORK
STATE TAX COMMISSION

HEARING UNIT - File Copy

TAX UBT
ART. 23 722

In the Matter of the Petition :

of :

JOSEPH R. COURY :

DECISION

For a Redetermination of a Deficiency :
or for Refund of Unincorporated Busi- :
ness Taxes under Article 23 of the Tax :
Law for the years 1961, 1962, and 1963 :
:

The taxpayer having filed a petition pursuant to Sections 722 and 689 of the Tax Law for a redetermination of a deficiency under date of October 25, 1965, of unincorporated business taxes imposed by Article 23 of the Tax Law for the years 1961, 1962, and 1963, and a hearing thereon 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 herein is whether the taxpayer is exempt from the unincorporated business tax by reason of being an employee. The computation of the deficiencies, otherwise due, are not in issue. The penalties asserted have not been separately contested.

2. The asserted deficiencies are as follows: for 1961, \$103.44 with a penalty of \$25.86 and interest; for 1962, \$258.87 with a penalty of \$64.72 and interest; and for 1963, \$318.73 with a penalty of \$79.68 and interest.

3. Mr. Coury is a manufacturer's representative. He represented six or seven manufacturers in each of the taxable years in question with from 75% to 85% of his gross commissions in each year being from Chester Cable Corp. of Chester, New York, a manufacturer of cable, and over 10% in each year being from Rodale Mfg. Co. of Emmaus,

Pennsylvania, manufacturer of wiring devices on switches.

4. Mr. Coury maintains an office in one room of his home with a desk, filing cabinet, typewriter and adding machine.

5. Mr. Coury has a letterhead with his name, address, two phone numbers (one being a telephone answering service) and the description thereon "Representative - Electrical Manufacturers". He carries a business card which is similar.

6. Mr. Coury is on a straight commission basis for each manufacturer. He had no assigned territory for any manufacturer other than Chester Cable Corp. He bears his own expenses.

7. No manufacturer deducted either income withholding or social security taxes from Mr. Coury's commissions. He was not covered for workman's compensation. Mr. Coury paid Federal Self-Employment Tax.

8. For Chester Cable, Mr. Coury can sell only to electrical distributors but he did this on an exclusive basis. He could not sell to manufacturers, electronics or hardware stores. He covered New York City, Long Island, and Westchester County. Although Mr. Coury asserted he had a written contract with Chester Cable, he refused to produce it. He had to call on past due accounts for Chester Cable.

9. Mr. Coury writes reports to Chester Cable on Chester's memo forms. He receives lists of daily follow-ups from Chester Cable.

10. Although Mr. Coury asserts that Chester Cable Corp. controls his activities, he has previously made written admissions that no manufacturer can "according to agreement, control or supervise my activities", that "my time can never be regulated" and further that he has represented manufacturers of varying degrees of loyalty and asserted his own independence in choosing loyalties. His explanation of this statement is that it was made in response to

what he thought was a tax audit of his business expenses and, further, that he was feeling expansive at the time. Such an explanation can be given very little weight.

11. Mr. Coury has not produced corroborating testimony of his assertion that Chester Cable Corp. controlled his activities.

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

DECIDES:

A. The taxpayer is not an employee but is an independent contractor and is subject to the unincorporated business tax.

B. The petition for a redetermination is denied and the deficiencies and penalties as stated in paragraph two are affirmed together with such interest, if any, as many be lawfully due pursuant to Section 684 of the Tax Law.

DATED: Albany, New York

STATE TAX COMMISSION

March 24, 1970

Norman Gellman

PRESIDENT

Bruce M. M. M. M.

COMMISSIONER

Milton Koerner

COMMISSIONER