

STATE OF NEW YORK
STATE TAX COMMISSION

HEARING UNIT - File Copy
TAX UBT
ART. 23 SECS. 722-689
KEY WORDS _____
CROSS REFS. _____
DECISION _____
CASE LAW CITATIONS _____
REMARKS _____

In the Matter of the Petition
of
HAROLD R. RAININ
For Redetermination of a Deficiency
or for Refund of Unincorporated
Business Taxes under Article 23 of
the Tax Law for the Year 1961

The taxpayer having filed a petition pursuant to Sections 722 and 689 of the Tax Law for a redetermination of a deficiency dated March 15, 1965, of unincorporated business taxes, due under Article 23 of the Tax Law for the year 1961 and a hearing having been duly held before Vincent P. Molineaux, Hearing Officer, and the file of the Department pertaining to said deficiency having been duly examined and considered,

The State Tax Commission hereby

FINDS:

1. The sole issue in the case is the allocation of income to an alleged office of the taxpayer outside the State.
2. The taxpayer filed a New York State Unincorporated Business Tax return and allocated 23.64% of his income to an office allegedly maintained in Kearney, New Jersey.
3. The taxpayer together with his wife was engaged in the business of the rental of medical equipment under the name of Enurtone Co. during the four years, 1958 through 1961. The principal office of this business was located in Corona, Queens County, New York.
4. The taxpayer, as Enurtone Co., was a franchised dealer of Enurtone Co. of San Francisco for the area of New York, New

Jersey and part of Connecticut.

5. Taxpayer employs, as a representative, a Mr. Harold Casell who resides in Kearney, New Jersey. Mr. Casell's duties include the servicing and maintenance of taxpayer's equipment located at homes of its New Jersey customers or at other locations in New Jersey.

6. Taxpayer leased 320 pieces of equipment from Enurstone of California, 80 of which were used with respect to its New Jersey business. Of these 80 pieces, 60 would generally be in the homes of customers, a few, less than 12, would be in New York for major repairs and the remainder would be "in transit" or at a location in New Jersey, usually the home of Mr. Casell, for minor repairs.

7. Taxpayer paid unemployment insurance taxes to New Jersey from 1958 through 1961, and disability benefits had been paid to Mr. Casell by New Jersey. Taxpayer does not withhold New York State or City income taxes on the corporations of Mr. Casell.

8. Taxpayer maintains two telephones in connection with its business in the State of New Jersey. One is an unlisted phone at the Kearney, New Jersey, residence of Mr. Casell and is used for communications between Mr. Casell and the principal office of the company in Corona, Queens, and for calls by Mr. Casell to customers. The other phone is known as a foreign exchange line, serviced by New Jersey Bell Telephone Co. and bears a listed New Jersey exchange number, although the only phone on this line is treated at Corona, Queens. This phone number is used by customers in calling the company. These callers are told that Mr. Casell will call them back, and the message is transmitted to Mr. Casell over the unlisted line of Mr. Casell.

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

A. The taxpayer holds itself out as having an office in New Jersey; and some of its goods are actually stored in New Jersey; and an employee is present in New Jersey to secure communications from customers.

B. The notice of deficiency for 1961 is erroneous and is canceled in full.

Dated: Albany, New York

STATE TAX COMMISSION

May 25, 1970

Upmann Gallivan
PRESIDENT

Bruce Manning
COMMISSIONER

Melvin Koerner
COMMISSIONER