

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

FRANKLYN R. FOOTE

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) 1961, 1962 & 1963

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

State of New York
County of Albany

Martha Funaro , 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 28th day of December , 19 71, she served the within
Notice of Decision (or Determination) by (certified) mail upon Franklyn R.
Foote (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Franklyn R. Foote
Maxwell Road
Newtonville, 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

28th day of December , 1971

Paul Zimmerman

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

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she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 28th day of December , 19 71, she served the within
Notice of Decision (or Determination) by (certified) mail upon Arthur W.
Pagano, P.A. (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Arthur W. Pagano
Arthur W. Pagano & Sons
187 No. Allen Street
Albany, New York 12206
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

28th day of December , 1971.

Rae Zimmerman

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
FRANKLYN R. FOOTE	:	DECISION
for Redetermination of Deficiency or	:	
for Refund of Unincorporated Business	:	
Taxes under Article 23 of the Tax Law	:	
for the Years 1961, 1962 and 1963.	:	

Petitioner, Franklyn R. Foote, has filed a petition for redetermination of deficiency or for refund of unincorporated business taxes under Article 23 of the Tax Law for the years 1961, 1962 and 1963. (File No. 3-3900672.) A formal hearing was held before Martin Schapiro, Hearing Officer, at the offices of the State Tax Commission, State Campus, Albany, New York on November 23, 1965 at 10:00 A.M. Petitioner appeared by Arthur W. Pagano, Public Accountant.

FINDINGS OF FACT

1. Petitioner, Franklyn R. Foote, filed New York State unincorporated business tax returns for the years 1961, 1962 and 1963. He did not include in those returns salary income of \$9,600.00 per annum received from F.R. Foote, Inc. during each of said years. The amount of the salary income for the year 1961 was in excess of 25% of the adjusted gross income stated in the return for that year.

2. On July 12, 1965 the Income Tax Bureau issued a Statement of Audit Changes imposing unincorporated business tax upon the salary income received by petitioner, Franklyn R. Foote, from F.R. Foote, Inc. during the years 1961, 1962 and 1963, upon the ground that his noncorporate business activities and his business activities on behalf of the aforesaid corporation were similar in nature and completely intermingled and integrated in the production of income

and therefore the salary income constituted a part of business receipts of the business regularly carried on by him and accordingly issued a Notice of Deficiency therefor in the sum of \$1,030.03.

3. F.R. Foote, Inc. was incorporated in 1950. Petitioner was the sole stockholder and principal officer of the corporation. During the years 1961 through 1963, the corporation entered into various contracts with firms that manufactured heating and ventilating equipment. Under these contracts the corporation acted as either a manufacturers' representative or as a jobber or distributor. Where the corporation acted as a manufacturers' representative, it received a commission on sales made. Where it acted as a jobber or distributor, it purchased the equipment from the manufacturer and then sold it to its customers. In connection with its activities as a distributor or jobber, it leased a warehouse wherein it maintained a substantial inventory of equipment for sale to customers. Petitioner, Franklyn R. Foote, instructed firms with which the corporation had contracts as a manufacturers' representative, to make commission checks payable to a noncorporate bank account entitled "Franklyn R. Foote, special". These commissions were reported by him as the gross income of the unincorporated business. He received a salary of \$9,600.00 a year from the corporation during the aforesaid years. Other than the bank account, the unincorporated business had no facilities, equipment, telephone or stationary of its own. It exclusively used those of the corporation and a percentage of such corporate expenses were allocated to it.

4. Petitioner, Franklyn R. Foote, and "Frank R. Foote", the person named in the Notice of Deficiency, are one and the same person.

CONCLUSIONS OF LAW

A. That the activities of petitioner, Franklyn R. Foote, during the years 1961, 1962 and 1963, as an officer of F.R. Foote, Inc., were so integrated and interrelated with his activities in connection with

his unincorporated business as to constitute part of a business regularly carried on by him and therefore the salary received by him for services as an officer of the corporation was not exempt from the imposition of unincorporated business tax in accordance with the meaning and intent of section 703(b) of the Tax Law.

B. That the aforesaid activities of petitioner, Franklyn R. Foote, during the years 1961, 1962 and 1963, constituted the carrying on of an unincorporated business and his income derived therefrom was subject to unincorporated business tax in accordance with the meaning and intent of section 70 (b) of the Tax Law.

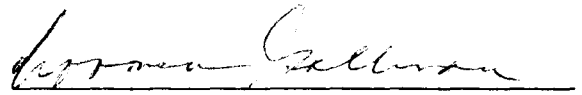
C. That petitioner, Franklyn R. Foote's omission from his 1961 unincorporated business tax return of an amount in excess of 25% of the adjusted gross income so stated, permitted an assessment of additional tax due within six years after the date of the filing of the return in accordance with the meaning and intent of section 683(d)(1) of the Tax Law.

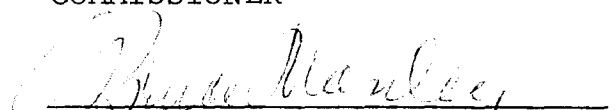
D. That the Notice of Deficiency addressed to "Frank R. Foote" was sufficient to give petitioner, Franklyn R. Foote, adequate notice of the assessment of additional taxes, and, therefore, a minor error in the name of petitioner will be disregarded as De Minimus. McCarthy Co. v. Commissioner of Internal Revenue 80 F.2d 618 (9th Cir., 1935.)

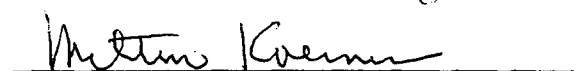
E. That the petition of Franklyn R. Foote is denied and the Notice of Deficiency issued July 12, 1965 is sustained.

DATED: Albany, New York
December 28, 1971

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


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