

STATE OF NEW YORK
STATE TAX COMMISSION

Nelson, Robert C.
UBT
Article 23

In the Matter of the Petition

of

Robert C. Nelson, Jr.

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 & 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 14th day of January, 1971, she served the within Notice of Decision (or Determination) by (certified) mail upon Robert C. Nelson, Jr. (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Robert C. Nelson, Jr.
34 Rockywood Road
Manhasset, 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

14th day of January, 1971

Jane S. Van Patten

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

Robert C. Nelson, Jr.

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 & 1963:

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State of New York
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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 14th day of January , 1971 , she served the within
Notice of Decision (or Determination) by (certified) mail upon Robert C.
Nelson, Jr. (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Lopez, Edwards, Frank & Co.

111 Broadway
New York, New York 10006

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

14th day of January, 1971.

Martha Funaro
James S. Van Patten

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
ROBERT C. NELSON, JR.	:	DECISION
for Redetermination of deficiency	:	
or for Refund of Unincorporated	:	
Business Taxes under Article 23 of	:	
the Tax Law for the years 1962 and	:	
1963	:	

Petitioner, Robert C. Nelson, Jr., has filed a petition for redetermination of deficiency or for refund of unincorporated business taxes for the years 1962 and 1963. (File No. 3-8114104) A formal hearing was held before Alfred Rubinstein, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York, on September 26, 1968, at 1:00 P.M. Lopez, Edwards, Frank & Co., by Samuel S. Baum, C.P.A. and Edwin J. Edwards, C.P.A. appeared for petitioner.

FINDINGS OF FACT

1. Petitioner, Robert C. Nelson, Jr., filed unincorporated business tax returns for the years 1962 and 1963. He reported as taxable income on these returns the net income from his diamond sales business but omitted from taxable income the salary paid to him by Fisher-Nelson Co., Inc.

2. On March 14, 1966, the Income Tax Bureau issued a statement of audit changes against petitioner, Robert C. Nelson, Jr., imposing unincorporated business tax on the salary received by him during the years 1962 and 1963 from Fisher-Nelson Co., Inc. upon the ground that the salary constituted income from a business regularly carried on

by him subject to unincorporated business tax pursuant to Article 23 of the Tax Law and accordingly issued a notice of deficiency therefor in the sum of \$1,097.68.

3. Petitioner, Robert C. Nelson, Jr., during the years 1962 and 1963 bought, sold and matched diamonds and other gems. He sold them at wholesale and retail. He was the sole proprietor and had so been since 1942. He maintained an office at 608 Fifth Avenue. He had two or three employees.

4. Fisher-Nelson Co., Inc. was incorporated in 1959. During the years 1962 and 1963 it was engaged in the business of buying and selling antique jewelry at wholesale. Petitioner was secretary of the corporation and owned 45% of the stock. Paul Fisher was President and owned 45% of the stock. Samuel Mayer was treasurer and owned 10% of the stock. There were no other corporate employees. Mr. Fisher was in charge of the buying and selling of the antique jewelry and the administration of the corporate business. Mr. Mayer was in charge of keeping records and petitioner served in a consultive capacity. The officers' salaries were subject to the alternate corporate franchise tax. Federal income, state income and social security taxes were withheld from petitioner's salary by the corporation.

5. Petitioner and the corporation had substantial inter company transactions. He sold to the corporation any antique jewelry he bought at bulk or estate sales and the corporation sold to him any diamonds and gems purchased by it under similar circumstances. Each entity kept separate records of the transactions and the accounts between the two were periodically settled.

6. The corporation was located in the same office suite as petitioner. They used a common reception area, but had separate offices. They each had their own telephone listings and safes. They each paid a share of the rent for the office. They each kept separate books and records. The corporation books and records were kept by Mr. Mayer and petitioner's books and records were kept by his secretary-receptionist who was supervised by Mr. Mayer. Mr. Mayer was on both petitioner's payroll and the corporation's payroll.

CONCLUSIONS OF LAW

A. That the services rendered by petitioner, Robert L. Nelson, Jr., during the years 1962 and 1963 as an officer of Fisher-Nelson Co., Inc., were not 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 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, Robert C. Nelson, Jr., during the years 1962 and 1963 did not constitute the carrying on of an unincorporated business and his income derived therefrom was not subject to unincorporated business tax in accordance with the meaning and intent of Section 703 of the Tax Law.

C. That the petition of Robert C. Nelson, Jr., is granted and the notice of deficiency issued March 14, 1966, is cancelled.

DATED: Albany, New York

January 13, 1970

STATE TAX COMMISSION

Norman Hallinan

COMMISSIONER

COMMISSIONER

Milton Kramer

COMMISSIONER