

STATE OF NEW YORK
STATE TAX COMMISSION

*Saretto, Placido
& Helen
U.B.T Article 23
1971*

In the Matter of the Petition

of

PLACIDO SARETTO & HELEN
SARETTO

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) 1960, 1961
and 1962.

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

State of New York
County of Albany

Linda Wilson, 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 1st day of March, 1971, she served the within
Notice of Decision (or Determination) by (certified) mail upon PLACIDO SARETTO
& HELEN SARETTO (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Placido & Helen Saretto
70 Durst Place
Yonkers, 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

1st day of March, 1971

James H. Furness

Linda Wilson

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

PLACIDO SARETTO & HELEN

SARETTO

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) 1960, 1961
and 1962.

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

State of New York
County of Albany

Linda Wilson, 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 1st day of March, 1971, she served the within Notice of Decision (or Determination) by (certified) mail upon JACK HOLLDAY (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Jack Hollday
2685 University Avenue
Bronx, New York 10468
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

1st day of March, 1971.

Martha Furano

Linda Wilson

STATE TAX COMMISSION

for Redetermination of Deficiency or :
for Refund of Unincorporated Business :
Taxes under Article 23 of the Tax Law :
for the Years 1960, 1961 and 1962. :

2. On May 20, 1963, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Placido Saretto, imposing unincorporated business tax on the salary income received by him during the year 1960 upon the ground that the salary was business income subject to unincorporated business tax in accordance with Article 23 of the Tax Law and accordingly, on October 7, 1963 issued a Notice of Deficiency therefor in the sum of \$845.15.

3. On June 1, 1964, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, Placido Saretto and Helen Saretto, imposing unincorporated business tax on the salary received by petitioner, Placido Saretto, during the years 1961 and 1962 upon the ground that the salary he received from P.D.A. Sales, Inc., was business income subject to unincorporated business tax under the provisions of Article 23 of the Tax Law and accordingly issued a Notice of Deficiency therefor in the sum of \$1,769.85.

4. During the years 1960, 1961 and 1962, petitioner, Placido Saretto, under the trade name of Own Instrument, was engaged in the business of manufacturing machine tools. During the same time, he was also president, sole officer, employee and stockholder of P.D.A. Sales, Inc., a corporation that acted as sales representative for Own Instrument. Substantially, all of the income received by it constituted commissions paid by Own Instrument. The two companies operated from the same address. He was the sole employee of the corporation. He did not sell products for any other company. The corporation paid him a salary which he reported on his federal and state tax returns as wages. Over 90% of the gross income of the corporation was paid to him as salary. It withheld federal and New York State income taxes and Social Security tax from his salary. His business expenses were paid by it. The corporation filed New York State corporate franchise tax returns showing small net losses in each year.

CONCLUSIONS OF LAW

A. That the services rendered by petitioner, Placido Saretto, during the years 1960, 1961 and 1962 as an officer of P.D.A. Sales, Inc. were so integrated and interrelated with the activities of his unincorporated business, Own Instrument, as to constitute part of a business regularly carried on by him and therefore the salary

received by him as income for services as an officer of the corporation was not exempt from unincorporated business tax within the meaning and intent of section 703(b) of the Tax Law.

B. That the aforesaid activities of petitioner, Placido Saretto, during the years 1960, 1961 and 1962 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 703 of the Tax Law.

C. That the petition of Placido Saretto and Helen Saretto is denied and the notices of deficiency issued May 20, 1963 and June 1, 1964 are sustained.

DATED: Albany, New York

February 26, 1971

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER