

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

THOMAS R. & CAROL A. FOX

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) 1965, 1966 and
1967.

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

State of New York
County of Albany

Lynn 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 6th day of April, 1972, she served the within Notice of Decision (or Determination) by (certified) mail upon THOMAS R. & CAROL A. FOX (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Thomas R. & Carol A. Fox
404 Broadview Drive
Syracuse, New York 13215
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

6th day of April, 1972

Rae Zimmerman

Lynn Wilson

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

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Lynn 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 6th day of April , 19 72, she served the within
Notice of Decision (or Determination) by (certified) mail upon ELEANOR THEODORE,
ESQ.

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Eleanor Theodore, Esq.

404 Hills Bldg.
Syracuse, New York 13202

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

6th day of April , 19 72

Rae Zimmerman

Lynn Wilson



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

NORMAN F. GALLMAN, PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

BUILDING 9, ROOM 214A

STATE CAMPUS
ALBANY, N. Y. 12227

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

DATED: Albany, New York
April 6, 1972

Thomas R. & Carol A. Fox
404 Broadview Drive
Syracuse, New York 13215

Dear Sir and Madam:

Please take notice of the **DECISION** of
the State Tax Commission enclosed herewith.

Please take further notice that pursuant to section(s)
722 of the Tax Law any proceeding
in court to review an adverse decision must be commenced
within **4 months** after the date of this notice.

Any inquiries concerning the computation of tax due or
refund allowed in accordance with this decision or
concerning any other matter relating hereto may be
addressed to the undersigned. These will be referred
to the proper party for reply.

Very truly yours,

L. Robert Leisner

Hearing Officer

cc Petitioner's Representative
Law Bureau

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
THOMAS R. & CAROL A. FOX	:	DECISION
for a Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business	:	
Taxes under Article 23 of the Tax Law	:	
for the Years 1965, 1966 and 1967.	:	

Thomas R. and Carol A. Fox petitioned for a redetermination of deficiencies in unincorporated business tax under Article 23 of the Tax Law for the years 1965, 1966 and 1967.

A formal hearing was held at the offices of the State Tax Commission, Syracuse, New York on March 31, 1971, before L. Robert Leisner, Hearing Officer. The taxpayer was represented by Eleanor Theodore, and the Income Tax Bureau was represented by Edward H. Best, Esq., (Alexander Weiss, Esq., of Counsel).

ISSUE

Were the activities of Thomas R. Fox as a sales agent in 1965, 1966 and 1967 subject to the unincorporated business tax under section 703 of the Tax Law?

FINDINGS OF FACT

1. The taxpayers, Thomas R. and Carol A. Fox, timely filed New York State income tax returns for the years 1965, 1966 and 1967, but did not file unincorporated business tax returns for those years.
2. A notice of determination of deficiencies in unincorporated business taxes for the years 1965, 1966 and 1967 was issued on October 27, 1969, against Thomas R. Fox only, under File No. 74776236. The taxpayers petitioned for redetermination of the deficiencies.
3. Thomas R. Fox, the petitioner, was a manufacturer's representative during all the years in issue.

4. Petitioner represented Wakefield Corp., Western Insulated Wire Co., and John C. Fox during 1965. John C. Fox was petitioner's father, and petitioner shared commissions with him. Subsequently, the petitioner represented six companies during the later years in issue.

5. Petitioner worked from his home. Petitioner did not maintain an office and had no employees.

6. Petitioner was generally required to visit his principals once a year and he was paid expenses for the trips.

7. Petitioner worked on his own with little supervision from any of his principals. His hours were not definitely established.

8. There was no arrangement between principals as to division of time.

9. During each year petitioner filed a Schedule "C" with his federal return with business income and expenses.

10. None of the companies withheld social security taxes or income taxes.

11. None of the companies gave petitioner a paid vacation.

DECISION

A. With respect to an unincorporated business, the issue of employer-employee relationship is a question of control in the absence of which there can be no finding of employment. A salesman is not an employee where he is not subject to direction and control as to his activities and the manner in which he is to make sales by the concerns whose products he sells. Hardy v. Murphy, 29 A.D. 2d 1038, 289 N.Y.S. 2d 694; Frishman v. Tax Commission, 33 A.D. 2d 1071, 307 N.Y.S. 2d 609.

B. Petitioner's case fails to show that he is under the direction and control of the firms whose products he sells. Petitioner was an independent sales agent. Petitioner's case fails

to show any error in the Income Tax Bureau's determination that petitioner is operating an unincorporated business under the Tax Law and that his income is subject to unincorporated business tax.

C. Petitioner's business income as a salesman is subject to unincorporated business tax.

D. The deficiencies for 1965, 1966 and 1967 determined under File No. 74776236 against Thomas R. Fox only, are correct and are sustained.

E. Pursuant to section 684 of the Tax Law, interest shall be added to the total amount due until the date of payment.

DATED: Albany, New York

April 6, 1972.

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER