

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

HARRY PRESTON & RAY PRESTON,  
his wife

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 &  
1964

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 3rd day of April , 1972, she served the within  
Notice of Decision (or Determination) by (certified) mail upon Harry & Ray  
Preston, (representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Harry Preston & Ray Preston  
880 Fifth Avenue  
New York, New York 10021

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

3rd day of April , 1972.

Joyce S. Van Patten

Martha Funaro

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

HARRY PRESTON & RAY PRESTON,  
his wife

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 &  
1964

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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 3rd day of April, 1972, she served the within  
Notice of Decision (or Determination) by (certified) mail upon H. Sheldon

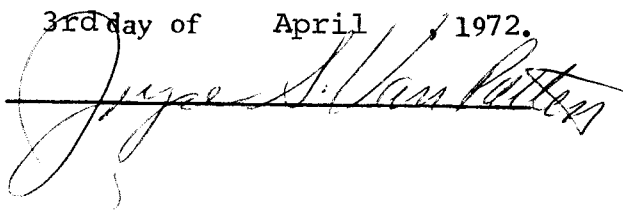
Kaufman (representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: H. Sheldon Kaufman  
1440 Broadway  
New York, New York 10018

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

3rd day of April, 1972.







STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A

STATE CAMPUS

ALBANY, N. Y. 12226

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION

NORMAN F. GALLMAN, ACTING PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

STATE TAX COMMISSION

HEARING UNIT

EDWARD ROOK

SECRETARY TO

COMMISSION

ADDRESS YOUR REPLY TO

Dated: Albany, New York

April 3, 1972

Harry Preston & Ray Preston  
880 Fifth Avenue  
New York, New York 10021

Dear Mr. & Mrs. Preston:

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

Please take further notice that pursuant to **section 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 relat-  
ing hereto may be addressed to the undersigned. These will be referred  
to the proper party for reply.

Very truly yours,

**Nigel G. Wright**

HEARING OFFICER

cc Petitioner's Representative  
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
HARRY PRESTON & RAY PRESTON, his wife	:	DECISION
for a Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business	:	
Taxes under Article 23 of the Tax Law for	:	
the years 1962, 1963 and 1964.	:	

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Harry Preston and Ray Preston, his wife, filed a petition under section 689 of the Tax Law for the redetermination of deficiencies in unincorporated business taxes under Article 23 of the Tax Law for the years 1962, 1963 and 1964. A hearing was held on November 19, 1970, at the offices of the State Tax Commission, 80 Centre Street, New York City, before Nigel G. Wright, Hearing Officer. H. Sheldon Kaufman, Esq., appeared for petitioners and Edward H. Best, Esq., (Francis X. Boylan, Esq., of Counsel) appeared for the Income Tax Bureau. The record of said hearing has been duly examined and considered.

#### ISSUE

The issue in this case is whether petitioner is subject to unincorporated business tax when he performs services under contract with a corporation which had bought out his own previous business firm.

#### FINDINGS OF FACT

1. Prior to July 28, 1961, petitioner was a stockholder and officer of Golden Fleece Tissue Mills, Inc. whose business was

tissue products which it sold mainly to grocery chains under their own house labels. On that date, he, and other shareholders, agreed to sell their stock in Golden Fleece to Standard Packaging Corporation for cash after which Golden Fleece would be liquidated.

2. As part of said agreement, petitioner agreed that for five years he would not, except as an officer or employee of Standard or with Standard's written consent be connected with any company engaged in the tissue business or any other business competitive with the business of Golden Fleece.

3. Also on July 28, 1961, petitioner entered into an agreement to serve as an independent consultant as to duties assigned to him from time to time by Standard. He agreed to devote such time as Standard may reasonably request to the business of Standard, to preserve secrecy as to Standard's affairs and to assign to Standard any inventions, patents, etc. made or conceived during his "term of employment" with Standard. His compensation was to be \$24,000.00 per annum during the "term of employment." The agreement could be terminated for any reason on 60 days notice from Standard and would automatically terminate at petitioner's death.

4. Petitioner was over 65 years of age when he sold his business. He did not become a member of Standard's pension plan and Standard did not withhold social security nor income tax from his remuneration. He was a member of Standard's Blue Shield and Blue Cross plan but did not participate in the Stock Option Plan. Standard would reimburse him for some entertainment expenses but not for entertainment at his own home.

Petitioner went to the office of Standard for a few hours every day. His duties were promotional and he spent most of his time contacting and entertaining the chain grocery stores which had been long-time customers of Golden Fleece.

5. Petitioner's son and son-in-law had also been stockholders and officers of Golden Fleece and had sold out to Standard at the same time. They each entered into contracts for their services with Standard wherein they were designated vice presidents. They were eligible for Standard's pension plan and stock options.

CONCLUSIONS OF LAW

A. The petitioner, Harry Preston, was an employee of Standard Packaging Corporation. He was doing much the same work as he had previously been doing before he sold his business. He was not holding himself out to other companies as engaged in his own business and his agreement with Standard assumes that he was subject to their direction and control. (See U.S. Treasury Revenue Ruling 55-695, 55-2 Cum. Bull. 410; compare U.S. Treasury Revenue Ruling 57-10; 57-1 Cum. Bull. 314).

DECISION

The petition is granted and the deficiencies are cancelled.

DATED: Albany, New York  
*April 3, 1972*

STATE TAX COMMISSION

*William J. Gellman*  
COMMISSIONER

*James H. Hickey*  
COMMISSIONER

*William K. Kenna*  
COMMISSIONER