

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

HAROLD SOUTHARD

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

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 and 1963.

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 25th day of August , 19 72, she served the within
Notice of Decision (or Determination) by (certified) mail upon HAROLD SOUTHARD
(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mr. Harold Southard
1632 Old Mill Road
Wantagh, 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

25th day of August , 1972.

Inaitha Turner

Lynn Wilson

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

HAROLD SOUTHARD

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 and 1963

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 25th day of August, 1972, she served the within Notice of Decision (or Determination) by (certified) mail upon MORRIS DRUBIN, C.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: Morris Drubin, C.P.A.
2608 Washington Avenue
Oceanside, 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

25th day of August, 1972.

Martha F. Muraro

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
August 25, 1972

Mr. Harold Southard
1632 Old Mill Road
Wantsagh, New York

Dear Mr. Southard:

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,

L. Robert Leisner

HEARING OFFICER

cc Petitioner's Representative
Law Bureau

STATE TAX COMMISSION

In the Matter of the Petition :
of :
HAROLD SOUTHARD : 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 and 1963. :

A formal hearing was held at the offices of the State Tax Commission, 80 Centre Street, New York, New York, on December 7, 1971, before L. Robert Leisner, Hearing Officer. The taxpayer was represented by Morris Drubin and the Income Tax Bureau was represented by Edward H. Best, Esq., (Alexander Weiss, Esq., of Counsel).

Were salaries received from Harron Plumbing and Heating, Inc. so interrelated to Harold Southard's business as a plumbing and heating contractor as to constitute income subject to the unincorporated business tax?

1. Petitioner, Harold Southard and Roslyn Southard, timely filed New York State income tax returns and unincorporated business tax returns for the years 1962 and 1963.

2. A Notice of Determination of deficiencies in unincorporated business tax for the years 1962 and 1963 was issued on March 28, 1966 against Harold Southard under File No. 3-7815923.

3. The taxpayer petitioned for redetermination of the deficiencies.

4. The petitioners had a plumbing business in Wantagh, New York.

5. Mr. Southard kept his own records for his individual business and he filed unincorporated business tax returns and paid the taxes for his individual plumbing work.

6. In 1961, Harold Southard was asked to bid on a large plumbing contract in connection with a nursing home. All labor on this contract was required to be 100% union.

7. In 1961, Mrs. Southard formed Harron Plumbing and Heating, Inc., and owned all of the stock. Harold Southard was neither a stockholder nor an officer of this corporation. His only connection with the corporation was that of an employee working and receiving wages as a union foreman.

8. The corporation, Harron Plumbing and Heating, Inc., did union jobs such as the nursing home and big buildings. Harold Southard worked as an employee of the corporation. He had a union card. There were other union plumbers also working for the corporation. The plumbers brought their tools to the job, but the corporation had its own large and special tools for the big jobs.

9. The corporation kept its own bank account and books and records. For all its employees, the corporation had withholding of union dues and there was withholding for social security, Federal income taxes, State income taxes, union dues, and union vacation pay.

10. When Harron Plumbing and Heating Inc. had no work, Harold Southard worked on his own, doing plumbing jobs on individual homes and small repair jobs on personal homes.

11. Harold Southard's plumbing work on individual homes was not related to his work as an employee of Harron Plumbing and Heating, Inc.

CONCLUSIONS OF LAW

A. Harold Southard was an employee of Harron Plumbing and Heating, Inc. and his income as an employee was not subject to unincorporated business tax.

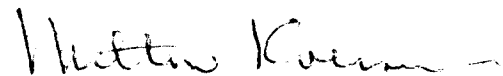
B. The petition is sustained. It is determined that there are no deficiencies in unincorporated business tax against the petitioner for 1962 and 1963.

DATED: Albany, New York
August 25, 1972

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER