

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ROBERT S. ELSTER

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) 1961 :

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 17th day of January , 19 74, she served the within
Notice of Decision (or Determination) by (certified) mail upon Robert S. Elster

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid

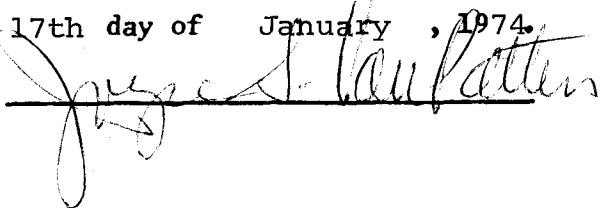
wrapper addressed as follows: Mr. Robert S. Elster
751 West Ferry Street
Apartment 8AB
Buffalo, New York 14222

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

17th day of January , 1974.





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she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 17th day of January , 1974, she served the within
Notice of Decision (or Determination) by (certified) mail upon Joseph L. Brock, 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: Joseph L. Brock, C.P.A.
Reifer, Brock & Bellanca
Room 1711 Hotel Statler
Buffalo, New York 14202
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

17th day of January , 1974.

James S. Statler

Martha Funaro



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
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

STATE TAX COMMISSION

Mario A. Procaccino,
~~XXXXXXXXXXXX~~ PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

ADDRESS YOUR REPLY TO

Dated: Albany, New York
January 17, 1974

Mr. Robert S. Elster
751 West Ferry Street
Apartment 8AB
Buffalo, New York 14222

Dear Mr. Elster:

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 deci-
sion must be commenced within **4 Months**
from 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 relative
hereto may be addressed to the undersigned.
These will be referred to the proper party for
reply.

Very truly yours,

L. Robert Leisner
L. Robert Leisner

HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :

of :

ROBERT S. ELSTER : DECISION

for a Redetermination of a Deficiency or for :
Refund of Unincorporated Business Taxes
under Article 23 of the Tax Law for the Year :
1961.

The taxpayer, Robert S. Elster, filed a petition for a redetermination of a deficiency in unincorporated business taxes for the year 1961.

A formal hearing was held before L. Robert Leisner, Hearing Officer, at the offices of the State Tax Commission, State Office Building, Buffalo, New York. Petitioner appeared personally and was represented by Joseph L. Brock, C.P.A., and the Income Tax Bureau was represented by Edward H. Best, Esq., (Alexander Weiss, Esq., of Counsel).

ISSUE

Was Elster Packing Co., Inc. so integrated with petitioner's unincorporated business as a general produce distributor that his salary income from Elster Packing Co., Inc. constituted additional unincorporated business income?

FINDINGS OF FACT

1. The petitioner, Robert S. Elster, timely filed a personal income tax return and an unincorporated business tax return for the year 1961. On his personal income tax return, Robert S. Elster reported total wages of \$6,500.00 received in 1961 from Elster

Packing Co., Inc. hereinafter called the packing corporation. The taxpayer reported unincorporated business income in the amount of \$39,450.58 for the year 1961 from the Thomas Elster Company, a proprietorship distributing general produce.

2. On September 13, 1965, the Income Tax Bureau issued a Notice of Deficiency under File No. 1-8375518 including the salary income reported by Robert S. Elster as additional business income subject to the unincorporated business tax.

3. The packing corporation's function was to process green tomatoes brought into Buffalo which were placed in a ripening room and kept until ripe enough to be sold. They were sorted as they ripened, and when ripe they were packed in cardboard, or corrugated cartons, or small retail tubes of three or four tomatoes. The packing corporation sold almost entirely to the produce company. The packing corporation was generally shut down during August, September and part of October.

4. The produce company did no packing. It distributed fresh fruits and vegetables of all kinds, which were sold in the original containers in which they were delivered to the produce company. The business of the produce company went on 12 months of the year and it sold to hundreds of customers throughout the area. Sales were to stores, wholesalers, retailers, and all segments of the business.

5. The packing corporation and the produce business each had their own employees and separate payrolls with separate compensation and unemployment insurance. The two concerns carried different compensation rates and different unemployment insurance rates.

6. Robert S. Elster served as the general manager of the packing corporation, engaged the services of employees, was responsible

for records and payrolls, buying and transportation and most other top level functions. However, with respect to the proprietorship produce business he delegated many of the managerial functions and there were other key personnel in the produce business.

7. The packing corporation maintained its own books of account, its own bank accounts, its own quarters and facilities, and its own equipment. The corporation was licensed federally and separately. It had its own license and charter, corporate officers and stationery.

8. The produce business had its own bank account, books of account, separate quarters and facilities and was licensed federally and separately.

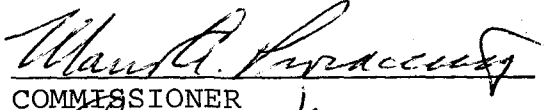
CONCLUSIONS OF LAW

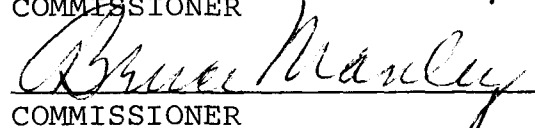
A. The taxpayer's unincorporated produce business is separate and distinct from the packing corporation. The income received by Robert S. Elster from the packing corporation during 1961 did not constitute receipts from a business regularly carried on by the taxpayer within the meaning and intent of section 703(b) Article 23 of the Tax Law.

B. The taxpayer's petition for redetermination of the deficiency is hereby sustained. It is determined that there is no deficiency against the taxpayer for the year 1961.

DATED: Albany, New York
December 28, 1973

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER