

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

EUGENE B. CRACOVANER

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 ~~(x)~~ 23 of the
Tax Law for the Year(s) 1962 and 1963;

State of New York
County of Albany

JOYCE S. VAN PATTEN, 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 19th day of September, 1974, she served the within
Notice of Decision (~~xx Determination~~) by (certified) mail upon Eugene B.

Cracovaner ~~XXXXXXXXXXXX~~ the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows:

Mr. Eugene B. Cracovaner
130 Circle Drive
Roslyn Heights, 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 the~~
~~xx~~ 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

19th day of September, 1974

Janet M. [Signature]

Joyce S. Van Patten

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

EUGENE B. CRACOVANER

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For a Redetermination of a Deficiency or
a Refund of Unincorporated Business :
Taxes under Article ~~(*)~~ 23 of the
Tax Law for the Year(s) 1962 and 1963 :

State of New York
County of Albany

JOYCE S. VAN PATTEN , 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 19th day of September , 1974, she served the within
Notice of Decision ~~for Determination~~ by (certified) mail upon Lawrence J.
Mittenthal (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows:

Lawrence J. Mittenthal, Esq.

275 Madison Avenue

New York, 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

19th day of September , 1974

Janet Mack

Joyce S. Van Patten



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

STATE TAX COMMISSION

MARIO A. PROCACCINO, PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

BUILDING 9, ROOM 214-A
STATE CAMPUS
ALBANY, N.Y. 12227

AREA CODE 518

ADDRESS YOUR REPLY TO

MR. WRIGHT 457-2655
MR. LEISNER 457-2657
MR. COBURN 457-2896

Dated: Albany, New York
September 19, 1974

Mr. Eugene B. Cracovaner
130 Circle Drive
Roslyn Heights, New York

Dear Mr. Cracovaner:

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

Please take further notice that pursuant to
Section(~~x~~) **722** of the Tax Law, any
proceeding in court to review an adverse deci-
sion must be commenced within **four 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
HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

AD-1.12 (8/73)

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
EUGENE B. CRACOVANER	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business	:	
Taxes under Article 23 of the Tax Law	:	
for the Years 1962 and 1963.	:	

Petitioner, Eugene B. Cracovaner, petitioned for a redetermination of deficiencies in 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 Tuesday, August 24, 1971, and continued on November 14, 1972, before L. Robert Leisner, Hearing Officer. The taxpayer was represented by Lawrence J. Mittenthall and the Income Tax Bureau was represented by Saul Heckelman, Esq. (Alexander Weiss and Albert J. Rossi, Esq., of counsel).

ISSUE

I. Whether petitioner, Eugene B. Cracovaner's activities as a textile salesman constituted the carrying on of an unincorporated business under section 703 of the Tax Law for the years 1962 and 1963?

II. If so, whether the salary received by petitioner, Eugene B. Cracovaner, from Eugene B. Cracovaner, Inc. during 1963 was so interrelated and integrated with said unincorporated business as to constitute a part of said business?

FINDINGS OF FACT

1. Petitioner, Eugene B. Cracovaner, timely filed New York State income and unincorporated business tax returns for the years 1962 and 1963.

2. A Notice of Determination of deficiencies in unincorporated business taxes for the years 1962 and 1963, was issued on April 11, 1966, against the taxpayer under File No. 3-8150865.

3. The taxpayer petitioned for redetermination of the deficiencies.

4. Petitioner, Eugene B. Cracovaner, was a textile salesman during the years 1962 and 1963. He was engaged in selling shoe fabrics to manufacturers of footwear. In 1962, he worked for the companies: Hockmeyer Brothers, Inc.; North America Mills; Collins and Aikman. In 1963, he worked for two companies: Hockmeyer Brothers, Inc.; Collins and Aikman. He was compensated by these various firms on a commission basis. No withholding taxes or social security taxes were paid by any of these companies on his behalf. All the aforesaid companies were noncompeting.

5. During 1962 and 1963, petitioner, Eugene B. Cracovaner, maintained an office at 389 Fifth Avenue, New York, New York, in which he stored and displayed sample merchandise and also received his mail and telephone messages. He was required to attend trade shows and exhibits but was not reimbursed for any business expenses except the entrance fees by the aforesaid manufacturers. He was required to attend occasional sales meetings.

6. During the years 1962 and 1963, petitioner, Eugene B. Cracovaner, filed a Schedule "C" with his Federal income tax returns. In corresponding with customers, he used the stationery of the firm he was representing. His sales activities were restricted to manufacturers of footwear. One of the aforesaid mentioned firms

provided him with selling aids. This firm set prices, assigned styles and gave general directions as to where to solicit and to whom he could and could not sell. He was required to report daily in order to submit any orders he had obtained for approval. He was required to submit, on a regular basis, progress reports on individual customers. He was furnished samples of the manufacturers merchandise.

7. The firms represented by petitioner, Eugene B. Cracovaner, did not carry unemployment insurance on him nor was he a member of their pension plan.

8. During the year 1963, petitioner, Eugene B. Cracovaner, received \$1,350.00 in salary from Eugene B. Cracovaner, Inc. Taxes were withheld from said salary.

CONCLUSIONS OF LAW

A. That petitioner, Eugene B. Cracovaner's activities as a textile salesman constituted the carrying on of an unincorporated business under section 703 of the Tax Law for the years 1962 and 1963. Matter of David Goldstein, STC, August 25, 1971.

B. The firms for which he sold fabric did not maintain any substantial control over his sales activities except holding his orders subject to final company approval.


C. That the salary received by petitioner, Eugene B. Cracovaner, from Eugene B. Cracovaner, Inc. during 1963 was not subject to unincorporated business tax.

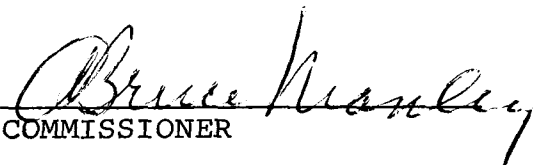
D. The deficiency as modified is sustained and the taxpayer's petition is denied.

E. The deficiency or refund shall be recomputed in accord with this decision.

DATED: Albany, New York
September 19, 1974

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER