

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

CHARLES H. JONES

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, 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 7th day of February, 1974, she served the within
Notice of Decision (or Determination) by (certified) mail upon CHARLES H. JONES

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

Mr. Charles H. Jones, JR.
4528 East Overlook Drive
Williamsville, New York 14221

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

7th day of February, 1974.

Martha Funaro
James J. Van Latten

STATE OF NEW YORK
STATE TAX COMMISSION

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she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 7th day of February, 1974, she served the within
Notice of Decision (or Determination) by (certified) mail upon GEORGE J.
ROBERTS, 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:

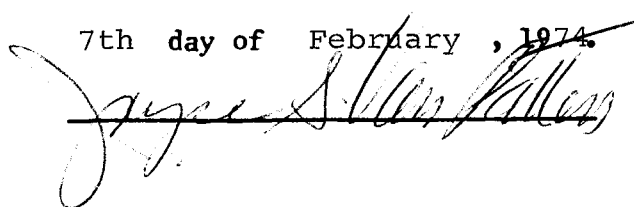

George J. Roberts, C.P.A.
11 Imperial Drive
Buffalo, New York 14226

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Sworn to before me this

7th day of February, 1974.



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
February 7, 1974

Mr. Charles J. Jones
4528 East Overlook Drive
Williamsville, New York 14221

Dear Mr. Jones:

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
HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
CHARLES H. JONES	:	DECISION
for a Redetermination of a Deficiency	:	
or for Refund of Unincorporated Business	:	
Taxes under Article 23 of the Tax Law	:	
for the Years 1961, 1962, 1963 and 1964.	:	

Charles H. Jones petitioned for a redetermination of deficiencies in unincorporated business taxes under Article 23 of the Tax Law for the years 1961, 1962, 1963 and 1964.

A formal hearing was held at the offices of the State Tax Commission, Buffalo, New York, on May 18, 1971, before L. Robert Leisner, Hearing Officer. The taxpayer was represented by George J. Roberts, C.P.A., and the Income Tax Bureau was represented by Edward H. Best, Esq., (Alexander Weiss, Esq., of Counsel).

ISSUE

Did the activities of Charles H. Jones constitute the carrying on of an unincorporated business tax under section 703 of the Tax Law?

FINDINGS OF FACT

1. Petitioner, Charles H. Jones, timely filed New York State income tax returns for the years 1961, 1962, 1963 and 1964, but did not file unincorporated business tax returns for those years.
2. A Notice of Determination of deficiencies in unincorporated business tax for the years 1961, 1962, 1963 and 1964 was issued on September 26, 1966, against Charles H. Jones under File No. 26193243.
3. The taxpayer petitioned for redetermination of the deficiencies.

4. During the years in question, the petitioner was a sales representative for Saran Line Pipe Co. Petitioner could not represent other companies except with its prior approval. Eighty-five per cent of the petitioner's time was spent in the representation of Saran Line Pipe Co. Fifteen per cent of petitioner's time was spent representing Kirney Industries and Leland Gifford Products which had products which were noncompetitive and closely related to the Saran Line Pipe Co. products.

5. When petitioner associated with Saran Line Pipe Co., he was given a definite territory from Binghamton and Elmira north and westward in New York State with Saran Line Pipe Co. customers. The customers were always regarded as company customers and petitioner used Saran Line Pipe Co. stationery.

6. Petitioner worked about ten hours a day. He was accompanied by Saran Line Pipe Co. supervisors on occasion, and he wrote sales orders and reports to them daily. He was called about four to six times a week on the phone by his supervisors. He used the company sales samples, brochures and sales presentation.

7. He was required to attend seminars and sales meetings twice a year.

8. Petitioner had no withholding for social security or income taxes.

9. During the years involved, petitioner had no office, he worked out of his home, and he had no employees. He had no other means of livelihood.

10. The new activity in the special chemicals industry to which petitioner sold declined in western New York in the 1960's and petitioner's sales fell.

11. Petitioner's representation was terminated by Saran Line Pipe Co. several years later in 1968. Petitioner was unemployed and he received New York State Unemployment Insurance for six months until he found other work.

12. Petitioner was subject to the supervision and control of the Saran Line Pipe Co.

CONCLUSIONS OF LAW

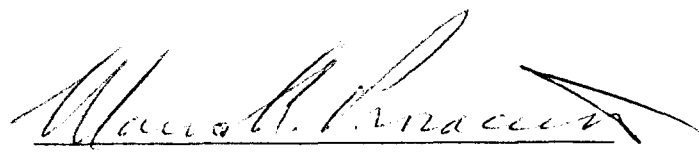
A. Petitioner's work for the Saran Line Pipe Co. was employment and not the operation of an unincorporated business.

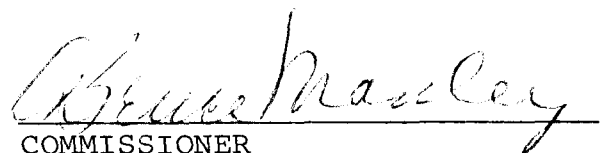
B. Petitioner's sales representation during the years in issue for Kirney Industries and Leland Gifford Products was not sufficient in volume to be taxable for unincorporated business taxes.


C. The taxpayer's petition is sustained and it is determined that there is no deficiency in unincorporated business taxes for the years 1961, 1962, 1963 and 1964.

DATED: Albany, New York
February 7, 1974

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER