

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

MELVEN & SYLVIA RESSLER

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) 1965.

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 13th day of February, 1974, she served the within
Notice of Decision (or Determination) by (certified) mail upon Melvin & Sylvia
Ressler (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mr. & Mrs. Melven Ressler
19 Jeffrey Place
New Hyde Park, New York 11042
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

13th day of February, 1974.

Martha Funaro

James S. Han Katten

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

MELVEN & SYLVIA RESSLER

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) 1965. :

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 13th day of February, 1974, she served the within
Notice of Decision (or Determination) by (certified) mail upon Alvin Lester
Sitomer, Esq. (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Alvin Lester Sitomer, Esq.
Sitomer, Sitomer & Porges
110 East 59th Street
New York, New York 10017
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

13th day of February, 1974

Joseph S. Van Patten

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
February 13, 1974

Mr. & Mrs. Melven Ressler
19 Jeffrey Place
New Hyde Park, New York 11042

Dear Mr. & Mrs. Ressler:

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,

Nigel G. Wright
HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

| | | |
|---|---|----------|
| In the Matter of the Petition | : | |
| | : | |
| of | : | |
| | : | |
| MELVEN and SYLVIA RESSLER | : | DECISION |
| for a Redetermination of a Deficiency or | : | |
| for Refund of Unincorporated Business Tax | : | |
| under Article 23 of the Tax Law for the | : | |
| Year 1965. | : | |

Melvin Ressler and Sylvia Ressler, filed a petition under section 689 of the Tax Law for the redetermination of a deficiency issued under date of August 26, 1968 for personal income tax under Article 23 of the Tax Law for the year 1965 in the amount of \$202.97 plus interest of \$28,78 for a total of \$231.75.

A hearing was duly held on November 14, 1973, at the offices of the State Tax Commission, 80 Centre Street, New York City, before Nigel G. Wright, Hearing Officer. The petitioners were represented by Benjamin D. Fein, C.P.A. The Income Tax Bureau was represented by Saul Heckelman, Esq., appearing by Francis X. Boylan, Esq. The record of said hearing has been duly examined and considered.

ISSUES

The issue in this case is whether the petitioner's income for purposes of the unincorporated business income tax should include a salary received by petitioners from a corporation.

FINDINGS OF FACT

1. The petitioner, Mr. Ressler, was the sole proprietor of Belin Radio & Appliance Co., which did business at 1266 First Avenue, New York City, until about June 1965 when it moved to 1291 First Avenue, New York City. This business serviced and repaired electrical appliances. It was started in 1946 as a partnership with one partner concentrating on service and the other partner concentrating on the sales of appliances. In 1957 it got out of the sales business and became exclusively a service business. This company employed seven persons on a full-time basis.

2. Mr. Ressler was also the president of Belin Radio & Appliance Corporation whose stock was owned solely by Mr. Ressler and his wife. This corporation is engaged in the sales of electrical appliances. The corporation had been started around 1957 and was located at 1294 Third Avenue until sometime prior to 1965 when it returned to 1291 First Avenue. During 1965 the petitioner's service company moved to these same premises. The sales corporation employed four persons on a full-time basis. Petitioner's devote about ninety per cent of his time to the sales corporation.

3. The petitioner's service company will service any appliance no matter where purchased. It services brands such as RCA, Emerson and DuMont, which the sales corporation does not handle. It does factory servicing for a number of nationally known manufacturers, but not for all of the brands that the corporation sells.

Its non-warranty work accounts for seventy-five percent of its business. It is largely a neighborhood business. It does installation work on appliances sold by the sales corporation but a separate charge is made and separate books are kept.

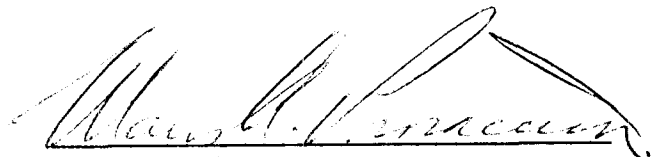
CONCLUSIONS OF LAW

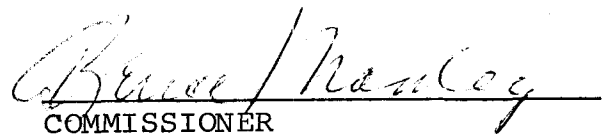
The services performed for the corporation are sufficiently unrelated to the business of the petitioner so that the salary in question is properly excluded from income.


The deficiency is erroneous and is cancelled.

DATED: Albany, New York
February 13, 1974

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER