

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

H. PALMER BURTON

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Unincorporated Business :
Taxes under Article(s) 23 of the :
Tax Law for the Year(s) ~~XXXXXX~~ 1966; :
1967, 1968, 1969 and 1970.

State of New York
County of Albany

Carmen Mottolese, 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 September, 1976, she served the within Notice of Decision by (certified) mail upon H. Palmer Burton ~~XXXXXXXXXX~~ the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mr. H. Palmer Burton
528 Herkimer Road
Utica, New York 13502

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 Postal Service within the State of New York.

That deponent further says that the said addressee is the ~~(XXXXXXXXXX)~~ of the petitioner herein and that the address set forth on said wrapper is the last known address of the ~~(XXXXXXXXXX)~~ petitioner.

Sworn to before me this

13th day of September, 1976

Carmen Mottolese

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

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1967, 1968, 1969 and 1970.

State of New York
County of Albany

Carmen Mottolese, 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 September, 1976, she served the within Notice of Decision by (certified) mail upon William P. Christy, Jr., Esq (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: William P. Christy, Jr., Esq.
Romax Building
731 James Street
Syracuse, New York 13203
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 Postal Service within the State of New York.

That deponent further says that the said addressee is the (representative of the) 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 September, 1976

Janet Mack

Carmen Mottolese



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU

STATE CAMPUS
ALBANY, N.Y. 12227

September 13, 1976

ADDRESS YOUR REPLY TO

TELEPHONE: (518) **457-3850**

Mr. H. Palmer Burton
528 Harkimer Road
Utica, New York 13502

Dear Mr. Burton:

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 **4 months**
from the date of this notice.

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. They
will be referred to the proper party for reply.

Very truly yours,

Paul B. Coburn
Supervising Tax
Hearing Officer

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
H. PALMER BURTON	:	DECISION
for Redetermination of a Deficiency	:	
or for Refund of Unincorporated Business	:	
Taxes under Article 23 of the Tax Law	:	
for the Years 1966, 1967, 1968, 1969	:	
and 1970.	:	

Petitioner, H. Palmer Burton, residing at 528 Herkimer Road, Utica, New York 13502, has filed a petition for redetermination of a deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the years 1966 through 1970. (File No. 01630).

A formal hearing was held before L. Robert Leisner, Hearing Officer, at the offices of the State Tax Commission, State Office Building, 333 East Washington Street, Syracuse, New York, on July 23, 1975, at 9:30 A.M. Petitioner appeared by William P. Christy Jr., Esq. The Income Tax Bureau appeared by Saul Heckelman, Esq., (Solomon Sies, Esq. of counsel).

ISSUES

I. Whether petitioner, H. Palmer Burton's selling activities during the years 1966 through 1970 constituted the carrying on of an unincorporated business.

II. Whether petitioner, H. Palmer Burton, had reasonable cause for failing to file New York State unincorporated business tax returns and pay unincorporated business tax for the years 1966 through 1970.

FINDINGS OF FACT

1. Petitioner, H. Palmer Burton, failed to file New York State unincorporated business tax returns for the years 1966 through 1970.

2. On April 10, 1972, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, H. Palmer Burton imposing unincorporated business tax upon the income received by petitioner from his activities as an agricultural machinery salesman during the years 1966 through 1970. It also imposed a penalty of \$1,989.70 for failure to file New York State unincorporated business tax and estimated unincorporated business tax returns for said years.

3. Petitioner, H. Palmer Burton, has been a salesman in the agricultural field for 35 years. Prior to August 1, 1966, petitioner represented Oakes Manufacturing Company, a division of F. M. C. Corporation. The company sold poultry and hog equipment, compressed hand sprayers and power sprayers. His territory was New York, Pennsylvania, the New England states, Quebec and Ontario. Petitioner contacted and established distributors of Oakes agricultural machinery, who subsequently purchased Oakes merchandise

for resale to retail dealers and large independent users. Petitioner trained distributor salesmen in the sale of Oakes' products and in the installation and repair of said equipment. Petitioner was also responsible for collecting delinquent accounts.

4. Oakes paid petitioner, H. Palmer Burton, a fixed sum once a month and a commission following the shipment of products purchased by distributors in his territory. Petitioner had a business office located at his home residence, had no assistants and used his residential phone for business purposes. Oakes and F. M. C. Corp. reimbursed petitioner for his home office, auto and travel expenses but did not deduct social security payments from his remuneration.

5. Petitioner, H. Palmer Burton, had a written contract with Oakes which prevented him from selling for other companies. Petitioner traveled twelve months a year. Oakes did not exert substantial control over petitioner's selling activities in his assigned territory. Petitioner determined the portion of his territory he desired to service at any specified time. He prepared his own work schedule and only occasionally did the general manager who nominally supervised his activities reroute his schedule.

6. On August 1, 1966, F. M. C. Corp. sold the Oakes Division to Bramco Products. Petitioner, H. Palmer Burton, subsequently acted as Branco's representative. He worked solely on a commission basis on merchandise purchased in his territory. Petitioner covered the same territory and essentially sold similar merchandise and performed the same services for Branco as he did for its predecessor.

7. Under petitioner, H. Palmer Burton's contract with Bramco, he could not sell other companies' products unless he first obtained Bramco's approval. It gave the requisite approval in three instances. Petitioner sold mechanical poultry equipment for Branco. To make this equipment fully mechanical and automatic a bulk feed bin was needed. Bramco did not manufacture said product. Bramco permitted petitioner to sell this accessory for Brock Manufacturing Company. After installation of the bulk feed bin, the merchandise required a flex auger. Petitioner sold this product for Chore-Time Equipment Company with Bramco's approval. His remuneration from the aforesaid firms was on a commission basis. After August, 1966, petitioner also sold a small power spray for John Bean, a Division of F. M. C. Corp., also on a commission basis, to the same distributors purchasing Bramco merchandise.

8. Petitioner, H. Palmer Burton, was not restricted by any agreements specifying the amount of time he had to work for the various firms he represented. Petitioner allocated approximately 80% to 90% of his time selling Bramco merchandise, and 10% to 20% representing the other firms.

9. Bramco exerted insubstantial control, and the other firms no control, over petitioner, H. Palmer Burton's selling activities. Petitioner prepared his own route sheet when representing Bramco, specifying where he planned to work the following week. Occasionally Bramco cancelled his route sheet. The company called him three or

four times a week to inquire whether he had serviced certain accounts. Only on a semi-monthly basis did the company request that petitioner handle certain accounts.

10. Petitioner, H. Palmer Burton, was a member of F. M. C. Corporation's pension plan. He entered said plan while a representative for the Oakes Division of F. M. C. Corp. F. M. C. Corp., Brock Manufacturing Co. and Chore-Time Equipment Company provided no other fringe benefits for petitioner nor withheld any taxes from petitioner's remuneration. Bramco also withheld no taxes from petitioner's commissions. Petitioner did not know whether he was covered by Bramco for unemployment insurance or workmen's compensation. He was not reimbursed for expenses incurred in connection with his sales activities by any of the companies he represented after August, 1966. Petitioner deducted expenses related to unreimbursed home office, travel and automobile depreciation on Schedule "C" of his Federal income tax returns for the years 1966 through 1970.

11. Petitioner, H. Palmer Burton's accountant, Roy Hart, prepared petitioner's tax return during the years in controversy. His accountant regularly gave petitioner tax advice during said years and failed to tell petitioner to file unincorporated business tax returns for the years 1966 through 1970.

CONCLUSIONS OF LAW

A. That the income received by petitioner, H. Palmer Burton, from the firms he represented in the years 1966 through 1970, constituted income from his business as a salesman of agricultural machinery and not as an employee exempt from the imposition of the unincorporated business tax, in accordance with the meaning and intent of section 703(b) of the Tax Law.

B. That the aforesaid activities of petitioner, H. Palmer Burton, during the years 1966 through 1970, constituted the carrying on of an unincorporated business and his income derived therefrom was subject to the unincorporated business tax in accordance with the meaning and intent of section 703 of the Tax Law.

C. That petitioner, H. Palmer Burton, had reasonable cause for failing to file New York State unincorporated business tax and estimated unincorporated business tax returns for the years 1966 through 1970, and, therefore, the penalties assessed pursuant to former section 685(a), 685(a)(1) and (2) and 685(c) of the Tax Law are waived.

D. That the petition of H. Palmer Burton is granted to the extent of cancelling the penalties imposed pursuant to former

section 685(a) and sections 685(a)(1) and 685(a)(2) and 685(c) of the Tax Law for the years 1966 through 1970, in the sum of \$1,989.70, and, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York
September 13, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER