

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
LLOYD COCHRAN

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Unincorporated Business :
Taxes under Article ~~13~~ 23 of the :
Tax Law for the Year(s) ~~1969 and 1970~~ :
1969 and 1970.

State of New York
County of Albany

Catherine Steele, 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 12th day of August, 1976, she served the within
Notice of Decision by (certified) mail upon Lloyd Cochran

~~(Representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. Lloyd Cochran
5 Davison Road
Lockport, New York 14094

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

12th day of August, 1976.

Catherine Steele

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

TAX APPEALS BUREAU

STATE CAMPUS
ALBANY, N.Y. 12227

STATE TAX COMMISSION

ADDRESS YOUR REPLY TO

August 12, 1976

TELEPHONE: (516) 457-3850

Mr. Lloyd Cochran
5 Davison Road
Lockport, New York 14094

Dear Mr. Cochran:

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 :
LLOYD COCHRAN : DECISION
for Redetermination of a Deficiency or for :
Refund of Unincorporated Business Tax :
Under Article 23 of the Tax Law for the :
Years 1969 and 1970.

Petitioner, Lloyd Cochran, residing at 5 Davison Road, Lockport, New York 14094, 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 1969 and 1970. (File No. 01550). 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, on Wednesday, April 28, 1976, at 2:30 P.M. Petitioner appeared by Paul Gleason. The Income Tax Bureau appeared by Peter Crotty, Esq. (Richard Kaufman, Esq. of Counsel).

ISSUE

Did petitioner, Lloyd Cochran's sales activities with Stearns & Foster Inc. and Lloyd Cochran Associates, during the years 1969 and 1970, constitute the carrying on of an unincorporated business?

FINDINGS OF FACT

1. Petitioner, Lloyd Cochran, filed New York State income tax resident returns for the years 1969 and 1970. He did not file New York State unincorporated business tax returns for said years.

2. On February 26, 1973, the Income Tax Bureau issued a Statement of Audit Changes against the petitioner, Lloyd Cochran imposing unincorporated business tax upon the income derived from his activities as an Easter grass salesman with Lloyd Cochran Associates, and as a sales consultant and cotton batten salesman with Stearns & Foster Inc. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency against him in the total sum of \$788.86.

3. Since 1931, the petitioner, Lloyd Cochran, was Vice President of Lockport Mills. Lockport Mills dealt primarily in the production and sale of cotton batten. They also dealt in the sale of Easter grass. Lockport Mills was forced to abandon the sale of Easter grass for financial reasons, and the petitioner personally took over that phase of the company's business under the name, Lloyd Cochran Associates.

4. Lockport Mills subsequently became bankrupt. Stearns and Foster Inc. acquired Lockport Mills' accounts, with the petitioner becoming a member of Stearns and Foster's sales personnel. He represented Stearns and Foster in transactions of cotton batten with national distributors. Because of petitioner's age, company rules prevented his placement on the regular company payroll. Instead, he was paid on a fee basis with yearly bonuses. He was reimbursed for all expenses incurred while working for Stearns and Foster, but no taxes were withheld from his pay checks, and no fringe benefits were received. The petitioner serviced the accounts designated by Stearns and Foster, and the firm also set all prices and terms of sale of cotton

batten to the distributor. It exercised substantial direction and control over his sales activities and techniques and over the time that he devoted to sales.

5. During the years in controversy, the petitioner continued to sell Easter grass under the name Lloyd Cochran Associates. The operation and expenses of the aforementioned business were kept separate by the petitioner from his activities with Stearns and Foster. He earned less than \$5,000.00 in income in the years 1969 and 1970 from his activities with Lloyd Cochran Associates. He sold Easter grass to different customers than he sold cotton batting.

CONCLUSIONS OF LAW

A. That the control exercised by Stearns and Foster, Inc. over the activities of the petitioner, Lloyd Cochran, during the years 1969 and 1970 was sufficient to permit his designation as their employee. He is, therefore, exempt from the imposition of the unincorporated business tax on his income derived from Stearns and Foster, Inc. in accordance with the meaning and intent of section 703(b) of the Tax Law. His income from Lloyd Cochran Associates was not large enough to be subject to the unincorporated business tax.

B. That the petition of Lloyd Cochran is granted, and the Notice of Deficiency issued February 26, 1973, is cancelled.

DATED: Albany, New York
August 12, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER