

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

HARRY L. ENNIS

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(s) 23 of the
Tax Law for the Year(s) 1962, 1963
and 1964.

State of New York
County of Albany

JANET MACK

, 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 27th day of January , 1976 , she served the within
Notice of Decision (~~or Determination~~) by (certified) mail upon Harry L. Ennis

(~~Representative of~~) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mr. Harry L. Ennis

RD #3

Horseheads, New York 14845

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

27th day of January , 1976.

Mary Hoff

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

HARRY L. ENNIS

For a Redetermination of a Deficiency or
a Refund of of Unincorporated Business
Taxes under Article(s) 23 of the
Tax Law for the Year(s) 1962, 1963
and 1964.

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

State of New York
County of Albany

JANET MACK, 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 27th day of January, 1976, she served the within
Notice of Decision (~~on Redetermination~~) by (certified) mail upon David A. Firley, CPA

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: David A. Firley, CPA
Ernst & Ernst
One Mony Plaza

Syracuse, New York 13202
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

27th day of January, 1976.

Mary Grady

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

BUILDING 9, ROOM 107
STATE CAMPUS
ALBANY, N.Y. 12227

AREA CODE 518

STATE TAX COMMISSION
HEARING UNIT

PAUL GREENBERG
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

MR. WRIGHT
MR. COBURN
MR. LEISNER

(518) 457-3850

DATED: Albany, New York
January 27, 1976

Mr. Harry L. Ennis
RD #3
Horseheads, New York 14845

Dear Mr. Ennis:

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,

PAUL GREENBERG
~~XXXXXXXXXXXX~~
ACTING DIRECTOR
TAX APPEALS BUREAU

Enc.

cc: Petitioner's Representative
Law Bureau

TA-1.12 (12/75)

MEMORANDUM


TO : State Tax Commission

FROM : Edward Rook

SUBJECT: The Petition of Harry L. Ennis
Unincorporated Business Taxes, 1962, 1963, 1964.

The attached file and the proposed decision have been reviewed. It is recommended that the conclusion of the proposed decision be approved.

The taxpayer asserts that he is employed by the American Agriculturist, Inc. and by Weatherby Agencies and is not an independent contractor subject to unincorporated business tax. The taxpayer received a salary from American Agriculturist, Inc. from which Federal and New York State income tax and social security tax was withheld. American Agriculturist also provided unemployment insurance, disability insurance, group medical protection, participation in its pension plan, paid vacation and business expense reimbursement. The taxpayer received commissions, an overrider and a consultant fee from Weatherby Agencies. The evidence indicated that both American Agriculturist, Inc. and Weatherby Agencies retained significant control and direction over the taxpayer's activities.



EDWARD ROOK
SECRETARY TO THE
STATE TAX COMMISSION

August 28, 1975
Attachment - file

*Approved
Martin Korman 9/14/75
Dineer 11/11/75
Doe 2, 1975
Thomas 11/11/75*

STATE OF NEW YORK
STATE TAX COMMISSION

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

Petitioner, Harry L. Ennis, petitioned for a redetermination of deficiencies in unincorporated business taxes under Article 23 of the Tax Law for the years 1962, 1963 and 1964.

A formal hearing was held at the offices of the State Tax Commission, State Office Building, Syracuse, New York, on June 29, 1969, before L. Robert Leisner, Hearing Officer. The taxpayer was represented by David A. Firley, C.P.A., and the Income Tax Bureau was represented by Saul Heckelman, Esq., (Alexander Weiss, Esq., of counsel).

ISSUE

Did petitioner, Harry L. Ennis' activities on behalf of the American Agriculturist, Inc. and the Weatherby Agencies during the years 1962, 1963 and 1964, constitute the carrying on of an unincorporated business?

FINDINGS OF FACT

1. Petitioner, Harry L. Ennis, timely filed New York State income tax returns for the years 1962, 1963 and 1964.
2. A Notice of Determination of deficiencies in unincorporated business taxes for the years 1962, 1963 and 1964, was issued on April 29, 1968, against the taxpayer under File No. 26750206.

3. The taxpayer petitioned for redetermination of the deficiencies.

4. During the years in question, the petitioner, Harry L. Ennis, was employed by the American Agriculturist, Inc., publishers of a farm magazine, as the New York State Field Manager. His duties consisted primarily of hiring and training sales representatives, and also selling subscriptions. He was paid a salary, which was subject to Federal and New York State income tax withholding, and social security tax withholding. The American Agriculturist, Inc., provided the petitioner with the following coverage and/or employee benefits: New York State Unemployment Insurance, Workmen's Compensation or disability insurance, group medical insurance, group life insurance, participation in the company's pension program, three weeks paid vacation, and business expense reimbursement. The corporation exercised dominion and control over petitioner's activities as both as a personnel manager and as a salesman.

5. During the years in question, the petitioner also was employed by the Weatherby Agencies for the North American Accident Insurance Company, as a trainer of salesmen and as a salesman himself. He was paid commissions, an override, and a consultant fee. The consultant fee was paid for services rendered as a manager of personnel and the petitioner was in no sense an independent contractor.

6. Petitioner's activities for the Weatherby Agencies coincided with his duties for the American Agriculturist, Inc., and, in each instance, the respective corporations retained

authority to direct the petitioner's actions to any activity which they felt demanded his attention.

7. The petitioner went to annual sales conferences in connection with both the American Agriculturist, Inc. and sponsored by the Weatherby Agencies, and both corporations paid parts of the petitioner's expenses at these conferences.

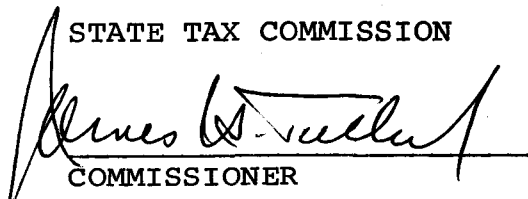
CONCLUSIONS OF LAW

A. That the activities of the petitioner in 1962, 1963 and 1964, on behalf of the American Agriculturist, Inc., were those of an employee, did not constitute the carrying on of an unincorporated business and were not subject to the unincorporated business tax.

B. That the petition is granted and the Notice of Deficiency issued April 29, 1968, is cancelled.

DATED: Albany, New York
January 27, 1976

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER