

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

CREST INSTRUMENT CO.

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or
a Revision of a Determination or a Refund
of Unincorporated Business
Taxes under Article (a) 23 of the
Tax Law for the Year ~~XXXXXX~~ 1968:

State of New York
County of Albany

Bruce Batchelor, 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 18th day of January, 1977, she served the within
Notice of Decision by (certified) mail upon Crest Instrument Co.

~~(Representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Crest Instrument Co.
c/o Pauline M. Orzano
2559 Esther Place
Oceanside, New York 11572
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)~~
~~XXXXXX~~ 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

18th day of January, 1977.

Bruce Batchelor

Janet Trach

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

CREST INSTRUMENT CO.

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Unincorporated Business :
Taxes under Article (a) 23 of the :
Tax Law for the Year ~~(XXXXXX)~~ 1968 :

State of New York
County of Albany

Bruce Batchelor , 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 18th day of January , 19 77, she served the within
Notice of Decision by (certified) mail upon Philip Auerbach
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Philip Auerbach
55 West Old Country Road
Hicksville, New York 11802
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

18th day of January , 19 77

Bruce Batchelor

Joel M. [Signature]



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

January 18, 1977

TELEPHONE: (518) 457-1723

✓
Crest Instrument Co.
c/o Pauline M. Orzano
2559 Esther Place
Oceanside, New York 11572

Gentlemen:

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,

Frank J. Puccia

Frank Puccia
Supervisor of Small
Claims Hearings

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
CREST INSTRUMENT CO.	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Unincorporated Business Taxes	:	
under Article 23 of the Tax Law for the	:	
Year 1968.	:	

Petitioner, Crest Instrument Co., c/o Pauline M. Orzano, 2559 Esther Place, Oceanside, New York 11572, filed a petition for redetermination of a deficiency or for refund of unincorporated business taxes under Article 23 of the Tax Law for the year 1968. (File No. 0995).

A small claims hearing was held October 26, 1976 at 9:15 A.M. at the offices of the State Tax Commission, Two World Trade Center, New York, New York, before Harry Huebsch, Hearing Officer. Petitioner, Crest Instrument Co., appeared by Yale Auerbach, C.P.A. The Income Tax Bureau appeared by Peter Crotty, Esq., (Abraham Schwartz, Esq., of counsel).

ISSUES

I. Whether or not an allowance for partners' services may be claimed as a deduction on the partnership return of Crest Instrument Co. when the three partners are trusts.

II. Can the Trustee, because of her duties as manager of Crest Instrument Co., be allowed a deduction for partners' services.

FINDINGS OF FACT

1. Crest Instrument Co. filed a 1968 partnership return in which a \$15,000.00 deduction was taken as allowance for partners' services. The partners were three trusts. The Income Tax Bureau disallowed the \$15,000.00 deduction and issued a Notice of Deficiency dated January 31, 1972, in the amount of \$825.00 additional unincorporated business tax due, plus \$138.29 interest, for a total sum of \$963.29.

2. John Orzano set up three trusts, one for each of his children to own and operate a machine shop. His wife, Pasqualina Orzano, was appointed Trustee of the three trusts. She rendered services as manager of the business.

CONCLUSIONS OF LAW

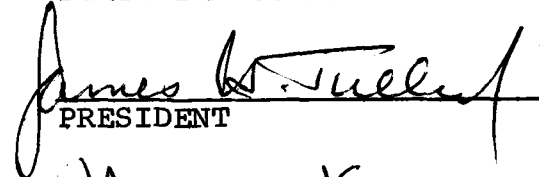
A. That Pasqualina Orzano was not a partner of Crest Instrument Co. and, therefore, said company may not claim a deduction on its return as an allowance for partners' services because of her services rendered.

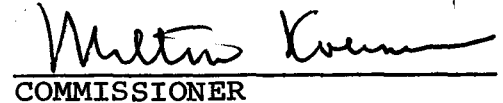
B. That the three trust entities were not actively engaged in the unincorporated business, nor did they, or could they, render personal services for the business. That, therefore, no allowance for partners' services may be claimed in accordance with the meaning and intent of section 708(a) of the Tax Law.

C. That, the petition of Crest Instrument Co. is denied and the Notice of Deficiency dated January 31, 1972 is sustained.

DATED: Albany, New York
January 18, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER