

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Hunter Walton & Co. :
AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Unincorporated :
Business Tax under Article 23 of the Tax Law for :
the Years 1968 - 1970. :

State of New York
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 9th day of October, 1981, he served the within notice of Decision by certified mail upon Hunter Walton & Co. the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Hunter Walton & Co.
921 Bergen Ave.
Jersey City, NJ 07306

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 petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
9th day of October, 1981.

Cornelia A. Haglund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Hunter Walton & Co. :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Unincorporated :
Business Tax under Article 23 of the Tax Law for :
the Years 1968 - 1970.

State of New York
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 9th day of October, 1981, he served the within notice of Decision by certified mail upon Irving L. Baumwald the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Irving L. Baumwald
Elmer Fox, Westheimer & Co.
500 Fifth Avenue
New York, NY 10036

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
9th day of October, 1981.

Cornie R. Hagelund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

October 9, 1981

Hunter Walton & Co.
921 Bergen Ave.
Jersey City, NJ 07306

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 690 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Irving L. Baumwald
Elmer Fox, Westheimer & Co.
500 Fifth Avenue
New York, NY 10036
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
HUNTER WALTON & CO.	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Unincorporated Business Tax under	:	
Article 23 of the Tax Law for the Years 1968,	:	
1969, 1970 and 1971.	:	

Petitioner, Hunter Walton & Co., 921 Bergen Avenue, Jersey City, New Jersey 07306, 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 1968, 1969, 1970 and 1971 (File No. 01274).

A formal hearing was held before Edward L. Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on November 16, 1976 at 10:45 A.M and continued to conclusion on May 19, 1977 at 9:50 A.M. Petitioners appeared by Elmer Fox, Westheimer & Co., CPA's (Irving L. Baumwald, CPA). The Audit Division appeared by Peter Crotty, Esq. (Alexander Weiss, Esq., of counsel).

ISSUE

Whether salaries paid to officers of a wholly-owned corporation constituted partnership unincorporated business gross income.

FINDINGS OF FACT

1. Petitioner, Hunter Walton & Co., timely filed New York State partnership income and unincorporated business tax returns for 1968, 1969, 1970 and 1971.
2. On January 29, 1973, the Audit Division issued a Notice of Deficiency against J. Hunter Walton et al d/b/a Hunter Walton & Co., asserting additional unincorporated business tax as follows:

<u>YEAR</u>	<u>DEFICIENCY</u>	<u>INTEREST</u>	<u>TOTAL</u>
1968	\$ 88.13	\$ 20.03	\$ 108.16
1969	814.62	136.29	950.91
1970	2,768.16	297.02	3,065.18
1/1/71 to 10/30/71	2,262.32	169.13	2,431.45
TOTAL	\$5,933.23	\$622.47	\$6,555.70

3. Petitioner executed and signed a "Consent Fixing Period of Limitation Upon Assessment of Personal Income and Unincorporated Business Taxes" for 1968, extending the period of limitation within which an assessment could be made to April 15, 1973.

4. Petitioner, Hunter Walton & Co., a partnership located in New York City, was a dealer in butter, eggs and cheese for more than a century prior to 1964. Its customers were wholesale jobbers in New York, New Jersey and Connecticut. It had a subdivision called Hunter Food Products Company ("Hunter Foods") which specialized in selling eggs overseas.

In 1964, a Western Hemisphere Trade Corporation was organized and incorporated in New York State. All its common stock was owned by the Hunter Walton Co. partnership. One partner owned all the preferred stock. According to the definition of a Western Hemisphere Trade Corporation in Section 921 of the Internal Revenue Code of 1954 (repealed by the Tax Reform Act of 1976, Pub. Law 94-455, approved October 4, 1976), 95 percent of the gross income of such a corporation (other than incidental purchases) must be from business done in any country or countries in North, Central or South America, or in the West Indies. The new corporation was called Hunter Latin American Corporation. It purchased meats, fish and poultry produced in the United States and sold directly through firms in Puerto Rico, The Virgin Islands and South America. In 1967 Hunter Latin American Corporation moved to Jersey City where it leased offices. Hunter Foods also moved to the same Jersey City offices.

The corporation and Hunter Foods shared office space and a bookkeeper. Each had a complete and separate set of books. The corporation incurred some expenses on behalf of Hunter Foods, such as travel, postage, telephone and administrative expenses. These expenses were taken up on the books of Hunter Foods by journal entry, and payment was made to the corporation.

5. Each entity had its own employees and payroll. Petitioner J. Hunter Walton, a partner in Hunter Walton & Co., was vice-president of Hunter Latin American Corporation and acted as Caribbean market advisor. In Hunter Walton & Co., he was the manager of the butter, oleo and cheese departments. In the period under audit, petitioner J. Hunter Walton received a salary from the corporation in 1968 and 1969 but none thereafter. He testified that he could not state how his time at the Jersey City office was divided between Hunter Foods (a division of Hunter Walton & Co.) and the corporation, but that Hunter Foods constituted a very small part of the partnership business. Hunter Walton & Co. ceased partnership activities on October 30, 1971. All its assets were exchanged for the stock of Hunter Walton & Co. Inc., a new corporation. The common stock of Hunter Latin American Corporation which had been carried on the books as an investment by the partnership, was distributed to the partners.

6. At the formal hearing, it was conceded by counsel for petitioners that the only modifications or changes made by the Audit Division that were being challenged were those made to Unincorporated Business Taxes under Article 23 of the Tax Law. The Audit Division's workpapers which were based on field audit (copies of which were afforded to petitioners) gave details of all changes made in tax returns previously filed for 1968, 1969, 1970 and for the period January 1, 1971 through October 30, 1971.

7. In their activities for both the partnership and Hunter Latin American Corporation, petitioners were wholly engaged in Wholesale Trade as classified by the Office of Management and Budget, Executive Office of the President, and followed by the Internal Revenue Service.

CONCLUSIONS OF LAW

A. That salaries paid by Hunter Latin American Corporation to employees who were also partners in Hunter Walton & Co. did not constitute unincorporated business gross income to the partnership within the meaning and intent of section 705 of the Tax Law since the services rendered by said employees were not integrated and/or interrelated with the activities of petitioner.

B. That the petition of Hunter Walton & Co. is granted and the Notice of Deficiency dated January 29, 1973 is cancelled.

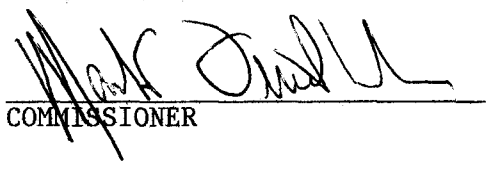
DATED: Albany, New York

OCT 09 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

TA 26 (9-79)

STATE OF NEW YORK
State Tax Commission
TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N. Y. 12227

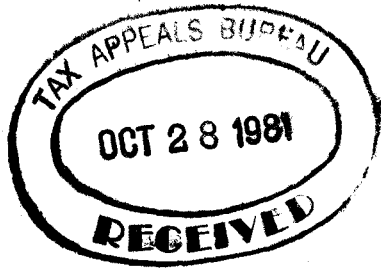


ATTEMPTED-NOT

RETURNED TO
HUNTER NATIONAL BANK
921 BERGEN AVE.
JERSEY CITY, NJ 07306

ATTEMPTED-NOT
KNOWN

8/11/81
RST



B/A
Sent



REQUEST FOR BETTER ADDRESS

Dec

Requested by <i>Joan Schultz</i>	Unit <i>Calender</i>	Date of Request <i>11/19/81</i>
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Please find most recent address of taxpayer described below; return to person named above.

Social Security Number <i>?</i>	Date of Petition <i>74/3/04</i>
Name <i>Hunter Walton + Co</i>	
Address <i>921 Bergen Ave Jersey City N. J. 07306</i>	

Results of search by Files

<input type="checkbox"/> New address:	
<input type="checkbox"/> Same as above, no better address	
<input type="checkbox"/> Other:	

File in Corp not in file 11/25/81

Searched by <i>Skinnersey</i>	Section <i>Corp Tax</i>	Date of Search <i>11/25/81</i>
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PERMANENT RECORDFOR INSERTION IN TAXPAYER'S FOLDER

STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

October 9, 1981

Hunter Walton & Co.
921 Bergen Ave.
Jersey City, NJ 07306

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Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Irving L. Baumwald
Elmer Fox, Westheimer & Co.
500 Fifth Avenue
New York, NY 10036
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
HUNTER WALTON & CO.	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Unincorporated Business Tax under	:	
Article 23 of the Tax Law for the Years 1968,	:	
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4. Petitioner, Hunter Walton & Co., a partnership located in New York City, was a dealer in butter, eggs and cheese for more than a century prior to 1964. Its customers were wholesale jobbers in New York, New Jersey and Connecticut. It had a subdivision called Hunter Food Products Company ("Hunter Foods") which specialized in selling eggs overseas.

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7. In their activities for both the partnership and Hunter Latin American Corporation, petitioners were wholly engaged in Wholesale Trade as classified by the Office of Management and Budget, Executive Office of the President, and followed by the Internal Revenue Service.

CONCLUSIONS OF LAW

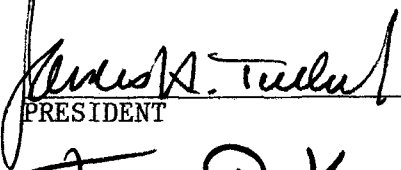
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DATED: Albany, New York

OCT 09 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER