

## BUREAU OF LAW

## MEMORANDUM

*Borkin, Alvin J. A-2*

TO: **Commissioners Murphy, Palestin & Macduff**

FROM: **Solomon Sles, Hearing Officer**

SUBJECT: **ALVIN J. BORKIN**

**1960 Assessment #AB-008147**  
**Penalty Assessment - \$500.00**

**Article 16**

A hearing with reference to the above matter was held before me at 30 Centre Street, New York, N.Y., on January 7, 1965. The appearances and the evidence produced were as shown in the stenographic minutes and exhibits submitted herewith.

The issue involved herein is whether the taxpayer filed a timely application for revision or refund with respect to the penalty assessment issued against him for failure to submit the information requested.

The taxpayer, on his New York State income tax return for the year 1960, indicated on Page 2, Schedule C, Item "j" of said return, "profits from business as salesman, \$13,407.91". The taxpayer filed a Schedule C on his Federal income tax return for the year 1960 showing total receipts or profits from business as traveling salesman in the sum of \$34,676.96 and business expenses in the sum of \$21,269.05 or net income from business in the sum of \$13,407.91.

On October 9, 1961, the Income Tax Bureau requested information in connection with the 1960 return filed by the taxpayer. He was requested to describe the exact nature of his business activities indicating each firm he represented, the amounts received as commissions, salaries, bonuses or other compensation in order to determine his liability under Article 23 of the Tax Law and to explain why an unincorporated business tax return was not filed. The taxpayer, having failed to respond to the aforementioned letter, a penalty assessment in the sum of \$500.00 was issued on May 1, 1962 for failure to furnish the information requested. The taxpayer did not file an application for revision or refund (Form IT-113) until August 27, 1963.

Although the taxpayer did not appear at the hearing, his accountant testified that during the year 1960 the taxpayer represented six or seven various firms as sales representative; that he would endeavor to sell the products of the various firms he represented to the same customers. It is contended that the taxpayer was under the supervision and control of the principals when he represented. Although it was testified that the taxpayer had an agreement in writing with one of the principals, no copy of such agreement was submitted, although requested.

The only explanation given for not having filed a timely

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application for revision or refund is that it is claimed that the taxpayer travels continuously on business and was only available in New York on limited occasions.

I am of the opinion that since the taxpayer failed to file a timely application for revision or refund in accordance with Section 374 of the Tax Law, the assessment should, therefore, be sustained.

For the reasons stated above, I recommend that the determination of the Tax Commission in the above matter be substantially in the form submitted herewith.

AUG 19 1965

SOLOMON SIES

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Hearing Officer

/s/

M. SCHAPIRO

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Approved

/s/

E. H. BEST

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Approved

SS:tc

STATE OF NEW YORK  
STATE TAX COMMISSION

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IN THE MATTER OF THE APPLICATION

OF

ALVIN J. BORKIN

FOR REVISION OR REFUND OF PERSONAL INCOME  
TAXES UNDER ARTICLE 16 OF THE TAX LAW FOR  
THE YEAR 1960.  
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Alvin J. Borkin, the taxpayer herein, having filed an application for revision or refund of personal income taxes under Article 16 of the Tax Law for the year 1960, and a hearing having been held in connection therewith at the office of the State Tax Commission, 80 Centre Street, New York, N.Y. on the 7th day of January, 1965, before Solomon Sles, Hearing Officer of the Department of Taxation and Finance, at which hearing the taxpayer did not appear but was represented by Lempel, Rogal & Nassar, CPA's, by Aaron Rogal, CPA, testimony having been taken and the matter having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That the taxpayer, Alvin J. Borkin, filed a personal income tax return under Article 16 of the Tax Law for the year 1960 in which he indicated on page 3, Schedule C of said return under Item "j" thereof, "profits from business as salesman, \$13,407.51"; that the taxpayer filed a Schedule C on his Federal income tax return for the year 1960, showing total receipts or profits from business as a traveling salesman in the sum of \$34,676.96 and business expenses in the sum of \$21,269.45 or net income from business in the sum of \$13,407.51; that on October 9, 1961, the Department of Taxation and Finance wrote the taxpayer advising him that an examination of his New York State income tax return for 1960 did not provide sufficient information to enable it to determine his liability for unincorporated business tax under Article 23 of the Tax Law and requested information

Regarding the business activities in detail conducted by the taxpayer during the year 1960; that the taxpayer failed to respond to said letter; that, accordingly, on May 1, 1962, the Department of Taxation and Finance made an additional assessment against the taxpayer for the year 1960 (Assessment #AB-008147) imposing a penalty in the sum of \$500.00 for failure to furnish the information requested in the letter of October 9, 1961, mentioned above.

(2) That the taxpayer did not file an application for revision or refund (Form IT-113) until August 27, 1963, more than one year from the date of the making of the assessment, as required under the provisions of Section 374 of the Tax Law.

Based upon the foregoing findings and all of the evidence presented herein, the State Tax Commission hereby

**DETERMINES:**

That the taxpayer failed to file a timely application for revision or refund within one year from the date of the making of the assessment for the year 1960 in accordance with the provisions of Section 374 of the Tax Law; that, accordingly, the assessment for the year 1960 (Assessment #AB-008147) is correct; that said assessment does not include any tax or other charge which could not have been lawfully demanded and that the taxpayer's application for revision or refund with respect to said assessment be and the same is hereby denied.

DATED: Albany, New York, on the 13th day of January, 1965.

**STATE TAX COMMISSION**

/s/

JOSEPH H. MURPHY

**President**

/s/

IRA J. PALESTIN

**Commissioner**

**Commissioner**