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PHOTO MICROGRAPHICS INC.

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In come Pax Seterminations
BUREAU OF LAW Miller Edward M.

MEMORANDUM

TO:

Commissioners Kurphy, Palestin and Macduff

FROM:

Vincent P. Holineaux, Hearing Officer

SUBJECT:

Shrard N. Hiller, Application for Revision or Refund of Personal Income Taxos Under Article 16, and Unincorporated Business Taxes Under Article 16-A, of the Tax Low

for the Year 1959

A hearing with reference to the above matter was held before me at 50 Centre Street, New York, New York on June 12, 1964. The appearences and the evidence produced were as shown in the stemographic minutes and exhibits submitted herevith.

The issue raised herein is whether certain income received by the tempayer, a salesmen of corrugated shipping containers, fibroboard boxes and folding eartens, reported as salary income, constitutes, receipts derived from an unincorporated business pursuant to section 186 of the Tax Lau.

The facts herein more fully set forth in the proposed determination disclose that during 1959 tempayor represented two corporations, Roomer Boxes, Inc. and Gaylord Centainer Gerp. Taxpayer's compensation was determined on a commission basis. Heerner Baxes, Inc. deducted Social Security and Federal withholding tax from taxpayer's commissions. Taxpayer's contract with Hoorner Baxes, Inc. outlined taxpayer's duties, territory, compensation and specified that temperer participate in profit sharing and the retirement fund. Capterd Container Corp. did not deduct any Pederal withholding. Security or State income tax from taxpayer's commissions. Tempayor did not have a drawing account with either corporation.

Gaylord Sontainer Corp. maintained an office at 475 Lexington Avenue, New York, New York. Taxpayer was not required to spend any specific period of time at this effice; texpayor was not required to maintain a sales quota, not did Gaylord Gantainer Corp. exercise control or supervision over texpayor's time. Tempayer did not attend any sales or other group meetings for Caylord Container Corp., but would go to the office at Lexington Avenue to confer with the sales manager and receive instructions from him.

Texpaper maintained an effice at 50 East 42 Street, New York and paid the rent, telephone, secretarial service and other operating expenses for this office. However Box, Inc. did not maintain an office in New York City and all of their business in New York City was transacted at the office maintained by taxpayer at 50 East 42 Street. On the door of this office appeared taxpayer's name and also the names of Hospage Boxes, Inc. and Caylord Centainer Corp.

Taxpayer alleged that he would attend as an employee of Hoerner Boxes, Inc., the New York meetings of the Piber Box Association of which Hoerner Boxes, Inc. was a member. Taxpayer testified that the Chicago meetings of the Piber Box Association would be attended by a Chicago suployee of Hoerner Boxes, Inc. Taxpayer was also required to attend the minual sales meeting in Hoekuk, Iowas and a se-called manager's meeting in Minneapolis, Minneseta. All expenses incurred in connection with taxpayer's attendance at these meetings were paid by Hoerner Boxes, Inc. With the exception of such occasional required attendance, the principal did not exercise control of supervision of the taxpayer's time.

Texpayor paid rent, telephone, secretarial service, personal traveling and entertainment expenses incurred in connection with his selling activities out of the commissions received from his principals and did not receive any reindursement from his principals for these expenses.

Taxpayer testified that the shippinggensteners of Gaylord Container Gerp. were primarily located in an area different than that of the Moerner Boxes, Inc. shipping area. Taxpayer testified that his activity was to sell the large ecompanies or users of boxes whose purchasing headquarters were in New York area but whose plants using the boxes were located elsewhere.

I am of the opinion that since the taxpayer paid the went, telephone, stemographic salary and other operating expenses for the office situated at 50 Mast 42 Street, New York, New York and incurred traveling and entertainment e meases which were not reimbursed by his principals, his activities as a salesman during the year in question constituted the carrying on of his own unincorporated business and that his entire income is subject to the unincorporated business tax. I have, therefore, prepared a proposed determination denying the taxpayer's application for revision or refund for 1959.

For the reasons stated, I recommend that the decision of the Tex Commission in this matter be substantially in the form submitted beyowith.

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Dated: March 28, 1966

/s/ M. SCHAPIRO
Approved
/s/ S. HECKELMAN

IN THE MARKES OF THE APPLICATION

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revision or refund of unincomposated trainings too amounts under Article 16-A of the Tex Law for the extension year 1959, and a bearing having been held in commontion therewith at the effice of the State Tex Commission, 50 denter Street, Northwest Text, before Timent 7, McLingens, Marring Cfficer of the Department of Samption and Finance, at thick benefits the temperar appeared in person and textified, and the record burden two days are the search

The State Tex Constants bereity Studies

- (1) that temperor rivel a personal impose tem return for the entender year 1959; that an accomment was thereafter isomet on Jamesy 23, 1962 (Accomment to, 27-ch(596) for unicomposited testines tex in the entent of \$1,349.78 on the ground that the entertual of \$1,349.78 on the ground that the entertual testines of an entertual test testing 1959 constituted the entirely on of an unicomposited backman subject to the provisions of Article 16-A of the Sax Law.
- (2) Shak darking 1959 tempaper separations has compensationed, the compensationed, the compensation was determined as a commission backet that Manuary Same, Inc. deducted Social Security and Federal withhelping the Same temperature compensation with Manuary Same temperature compensations that temperature compensations with Manuary Same temperature compensation with Manuary Same temperature compensations and same

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- (2) Shot Surject Southfall Supply that tempty will as although the hopey will not supply that tempty we are not not supply to a special of years of the at this efficient that tempty was not supply to maintain a sales quality, her did deployer was not supply to maintain a sales quality, her did deployer to the tempty of the
- (A) This because home, has all not unfailed in efficient to have the form that the parties and all of their business in the Took this took they are towarded at the excise materialist by temperature to \$6 had be strong at the door of this office appeared temperature and also the name of themser home, has and deplaced fundament toward at the strong paid the start, telephone, somethings and other appeared of the office.
- (5) that tempoper would attend the New York suptings of the Piter Sex Association of which Mostner Seaso, Sec. whi is content that tempoper would also attend the season solds supplied in Season, Season and a so-enline season's moting in Mostapatin, Mostapati

- (6) That tempeyor paid rent, telephone, accordants, service, personal transling and entertainment expenses installed in competion with his colling activities and of the commissions received from his principals and did not receive any subdimensions and from his principals for those expenses.
- (7) Should the stateping continuous of England Containing
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 the Second Penns, Inc., shipping areas that temperat's subtribly
 mas to sail the large companies or more of bond three primary
 handparitors were in the New York area but where places wring the
 bonds were leaded classics.

Denot upon the Seregoing Stations and 622 of the ordinals presented hereby, the State Ser Constrates hereby,

- (A) that during the year 1939, the temperative interest from the afternational emperations was because during from temperative one material emperative and was not become contact in an analysis and its temperature and past to the unforcemental business.
- (3) That, acceptingly, the unincomposited business the assessment terms for the extender year 1939 to afficult; that much assessment to correct and here not include any clear terms or change which are not laughtly due or coing.

Ballotte Alberty New York this 31st day of March . 1986

/s/ JOSEPH H. MURPHY

/s/ IRA J. PALESTIN

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