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Income Tax Determinations
Ballinger, Josiah P. A-Z

Commissioners Murphy, Macduff and Conlon

Solomon Sies, Hearing Officer

Josiah P. Ballinger

1956 Assessment No. L-[illegible]
1957 Assessment No. L-[illegible]
Arts. 16 and 16-A

Formal hearings in the above matter were held before me at the New York City office on September 13, 1963 and October [illegible], 1963.

The issue involved herein is allocation of business income and expenses of a non-resident taxpayer transacting business both within and without the State.

The taxpayer is a general insurance broker licensed in the State of New York and New Jersey, handling accident, life and casualty insurance. The taxpayer conducted his general insurance business both within and without the State of New York. [illegible] of his insurance business was placed with Travelers [illegible] through its offices at 80 John Street, New York City and at [illegible], New Jersey. The taxpayer was furnished with a [illegible] office at the offices of Travelers at 80 John Street where he spent [illegible] approximately six months a year, a few hours [illegible] with said business. He was not [illegible] and kept no records at said office. The expenses [illegible] maintenance of the office in New York City was borne solely by Travelers.

The taxpayer also maintained an office at his home in [illegible], New Jersey in connection with his insurance business where he kept full and complete records, files, desks, typewriters, [illegible] etc. During the years in issue, the taxpayer employed [illegible] girls to assist him with typing and clerical work with respect to the billings to his clients and the mailing of notices and [illegible] to the [illegible] policy holders. He maintained a summer home in Allenhurst, New Jersey and a winter home in [illegible], Florida, where he spent his summers and winters. He maintained [illegible] records of the policy holders and files in each of said homes and claimed business expenses in connection therewith in the total amount of $1,[illegible] during each of the years [illegible]. He [illegible] Agency to act as [illegible] on his behalf during the [illegible] winter months which he spent at his home in Florida. The premiums were paid directly to the taxpayer who deducted his commissions and remitted the balance to the insurance companies.

TO: Commissioners Murphy, Macduff and Conlon

RE: JOSIAH P. BALLINGER

Almost all of the taxpayer's business consisted of renewals. His total gross insurance brokerage commission income earned both within and without the State of New York amounted to $20,3[illegible] and $19,730.94 for the years 1956 and 1957, respectively. He claimed total business expenses of $8,350.87 and $8,866.19 for the years 1956 and 1957, respectively. The taxpayer was unable to indicate what portion of insurance commission income represented orders for insurance originally consummated in the State of New York and what portion represented orders for insurance originally consummated in the State of New Jersey. The taxpayer testified that the amounts of $12,908.58 and $12,082.33 included in his total gross insurance income for the years 1956 and 1957, respectively, represented commission income on risks located or resident in the State of New York. It is to be noted that for prior years the Income Tax Bureau permitted the taxpayer an allocation. However, the basis therefor is not indicated.

I am of the opinion that the taxpayer is entitled to an allocation of commission income on the orders for insurance consummated both within and without the State of New York; that since it is not possible to ascertain where the original orders for insurance were consummated, that the Commission consider the commission income on risks located or resident in this State as if the orders therefor were consummated here. I am of the further opinion that the deduction of $1,500 claimed by the taxpayer in connection with the storage of his duplicate records in his summer and winter homes is excessive and in lieu thereof that he be entitled as a fair and reasonable amount for storage of said records $100 for each of the years involved; that he also be allowed $150 contribution to Marble Collegiate Church of New York City for each of the years in issue. I have accordingly recomputed the personal income taxes and unincorporated business taxes of the taxpayer in accordance with the proposed determination.

For the reasons stated above, I recommend that a determination be made by the Tax Commission in the form submitted herewith.

APR 27 1967

5-5-67

SOLOMON SIES
Hearing Officer

/s/ MARTIN SCHAPIRO
Approved

/s/ SAUL HECKELMAN
Approved

STATE OF NEW YORK

STATE TAX COMMISSION

IN THE MATTER OF THE APPLICATIONS

OF

JOSIAH F. BELLINGER

FOR REVISION OR REFUND OF PERSONAL INCOME TAXES UNDER ARTICLE 16, AND UNINCORPORATED BUSINESS TAXES UNDER ARTICLE 16-A OF THE TAX LAW FOR THE YEARS 1956 AND 1957

Josiah F. Bellinger, the taxpayer herein, having filed applications for revision or refund of personal income taxes under Article 16 and unincorporated business taxes under Article 16-A of the Tax Law for the years 1956 and 1957, and hearings having been held in connection therewith at the office of the State Tax Commission, 80 Centre Street, New York, New York, on September 13, 1963, and October 21, 1963, before Solomon Sies, Hearing Officer for the Department of Taxation and Finance, at which hearing the taxpayer appeared personally and testified, and the record having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That the taxpayer, Josiah F. Bellinger, filed New York State non-resident income tax returns for the years 1956 and 1957; that on his return for 1956, the taxpayer indicated total brokerage commissions received by him during said year, as reported for Federal income tax purposes, in the amount of $20,396.93 and total business expenses in connection with said income in the amount of $8,350.07 of which he claimed $6,050.07 allocable to New York; that for 1957 he indicated total brokerage commissions received by him during said year in the amount of $19,737.94, as reported for Federal income tax purposes and business expenses in connection with said income in the amount of $8,863.19; that the taxpayer claimed an allocation of business income attributable to sources outside the State of New York for said years; that the taxpayer did not compute his New York State taxes due

for the years 1936 and 1937 and did not file any unincorporated business tax returns for said years; that on February 3, 1939, the Department of Taxation and Finance made assessments against the taxpayer of personal income taxes under Article 16 and unincorporated business taxes under Article 16-A of the Tax Law for the years 1936 and 1937 (Assessment Nos. B 59202 and B 59810) disallowing allocation of income claimed for both years and further disallowing business expenses in the amounts of $4,000 and $4,000 for the years 1936 and 1937, respectively; that the assessments were computed on the basis of total net income reported in the amounts of $13,534.06 and $10,094.75, for the years 1936 and 1937, respectively.

(2) That during the years 1936 and 1937 and prior thereto, the taxpayer was and still is a general insurance broker licensed in the states of New York and New Jersey, handling accident, fire and casualty insurance; that the taxpayer conducted his general insurance brokerage business both within and without the State of New York; that almost 90% of the taxpayer's insurance business was placed with Travelers Insurance Co. through its offices at 80 John Street, New York City and at Newark, New Jersey; that the taxpayer was furnished with a private office at the offices of Travelers Insurance Co. at 80 John Street, New York City where he spent five days a week, approximately six months a year, a few hours each day in connection with said insurance business; that the expenses in connection with the maintenance of the office in New York City were borne solely by Travelers Insurance Co.; that the taxpayer was not furnished any secretarial help and kept no records at said office.

(3) That, in addition, the taxpayer maintained an office at his home in Elizabeth, New Jersey in connection with said insurance business where he kept full and complete records; that he used two rooms in his home where he kept his files, desks, typewriters, adding machines, stationery, etc.; that during the years in issue the taxpayer employed high school girls to assist him with typing and clerical work with respect to the billings to his clients and the mailing of letters and circulars to about two thousand policy holders; that the taxpayer

arranged with Harkins Agency of New Jersey to act as sub-brokers on his behalf during the three winter months which he spent at his home in West Palm Beach, Florida; that the taxpayer serviced his own accounts; that the premiums were paid directly to the taxpayer who deducted his commissions and remitted the balance to the insurance companies.

(4) That the taxpayer maintained a summer home at Allenhurst, New Jersey, and a winter home in West Palm Beach, Florida where he spent his summers and winters; that he maintained complete duplicate records of the policy holders and files in each of said homes and claimed business expenses in connection therewith in the total amount of $1,500 during each of the years herein at issue; that the taxpayer claimed total business expenses of $4,358.87 and $4,866.39 for the years 1936 and 1937, respectively.

(5) That the taxpayer's total gross insurance brokerage commission income earned both within and without the State of New York amounted to $20,390.93 and $19,737.84 for the years 1936 and 1937, respectively; that the amounts of $7,476.35 and $7,655.51 included in the figures mentioned above represented earned commission income on orders for insurance consummated in the State of New Jersey during the years 1936 and 1937, respectively; that the amounts of $12,914.58 and $12,082.33 included in total gross income represented earned commission income on orders for insurance consummated within the State of New York during the years 1936 and 1937, respectively.

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

DETERMINES:

(A) That the taxpayer is entitled to an allocation of income attributable to sources both within and without the State of New York; that the amounts of gross income attributable to sources within the State of New York for the years 1936 and 1937 are $12,914.58 and $12,082.33, respectively.

(B) That the deduction of $1,500 claimed by the taxpayer in connection with the storage of files and duplicate records at his summer and winter homes, as more fully set forth in Finding (4) above, is excessive and, therefore, disallowed; that in lieu thereof, the taxpayer is allowed as a fair and reasonable amount for storage of said records $100 for each of the years 1936 and 1937; that the taxpayer is entitled to an allocation of expenses attributable to sources both within and without the State of New York in the amounts of $6,830.87 and $7,363.19 for the years 1936 and 1937, respectively; that the percentage of expense allocable to New York is .6335 or $4,336.60 for the year 1936 and .6115 or $4,498.91 for the year 1937; that the taxpayer is entitled to a deduction of $150 contributed to Marble Collegiate Church, New York City for each of the years in issue.

(C) That, accordingly, the assessments of personal income tax under Article 16 and unincorporated business taxes under Article 16-A of the Tax Law for the years 1936 and 1937 are hereby recomputed as follows:

	1936	1937
Gross N.Y. Income Reported	$12,906.97	$12,088.33
Less N. Y. Expenses 1936-N.Y. Gross Inc. [illegible] Total " " [illegible] x Total Expense $6,830.87 =	4,336.60 $ 8,571.97	
Less N. Y. Expenses 1937-N.Y. Gross Inc. [illegible] Total " " [illegible] x Total Expense $7,363.19 =		[illegible] $ [illegible]
Less deduction for storage of records	100.00 $ 8,471.97	[illegible] $ [illegible]
Less contribution to Marble Collegiate Church, NYC Adjusted Net Income	150.00 $ 8,321.97	[illegible] $ [illegible]
Personal Exemption Taxable Balance	2,500.00 $ 5,821.97	[illegible] $ [illegible]

		[illegible]	[illegible]	[illegible]	[illegible]
Normal Tax @ 2-[illegible]%	$ 210.10				
Less Reduction	35.00				
Normal Tax Due			$175.10		
Normal Tax 2-[illegible]%					[illegible]
Adjusted net business income		$8,381.97		$7,[illegible]	
	1956 / 1957				
Salary credit	$1,[illegible] $1,[illegible]				
Business exemption	5,000.00 5,000.00	[illegible]		[illegible]	
Balance subject to unincorporated business tax		$1,457.58		$ 866.7[illegible]	
Unincorporated business tax @ 4%	66.30				
Less Reduction	35.00				
Unincorporated business tax due			[illegible]		[illegible]
Total additional tax due			$ [illegible]		$[illegible]

together with interest and other charges that may be lawfully due thereon; that the assessments made against the taxpayer for the years 1956 and 1957 (Assessment Nos. [illegible] and [illegible], respectively) are hereby modified in accordance with the above recomputations; that said assessments, except as herein modified, are correct and do not include any tax or other charge which could not have been lawfully demanded, and that the taxpayer's applications for revision or refund, except as herein modified, are hereby denied.

DATED: Albany, New York on the 17th day of May, 1967.

STATE TAX COMMISSION

/s/ JOSEPH H. MURPHY
President

/s/ JAMES R. MACDUFF
Commissioner

/s/ WALTER MACLYN CONLON
Commissioner