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BUREAU OF LAW

MEMORANDUM

Income Tax Determinations

1768

A-2

*Risdon, Norman G.
& Genevieve*

TO: State Tax Commission

FROM: Francis V. Dow, Hearing Officer

SUBJECT: In the Matter of the Petition of
NORMAN G. RISDON & GENEVIEVE RISDON
For a Redetermination of a Deficiency
or For Refund of Personal Income Taxes
Under Article 22 and Unincorporated
Business Taxes Under Article 23 of the
Tax Law for the Year 1962

A hearing with reference to the above matter was held before me at 80 Centre Street, New York, New York on December 18, 1967. The appearances and exhibits produced were as shown in the stenographic minutes submitted herewith.

The issue involved herein is whether the taxpayer maintained a regular place of business outside New York State to allow allocation of his business income. The taxpayer filed an unincorporated business tax return in which he reported business income during 1962 in the sum of \$20,120.50, of which he allocated 86 2/3 percent or \$17,437.77 to New York State. A notice of deficiency and statement of audit changes was issued for the year 1962 (File No. 2-6540334) determining additional personal income and unincorporated business taxes and interest due in the sum of \$348.77 on the basis that since the taxpayer did not maintain a place of business outside of New York State his business income was not allocable.

The taxpayer is a resident of New Jersey. He is a food broker representing packers and canners of raisins, pecans, canned goods, peaches and spices. He maintained an office at 99 Hudson Street in New York City. His payroll for the year totalled \$23,131.89. One of his salesmen worked in New Jersey. The taxpayer's customers were located both in New York and in New Jersey. On his unincorporated business tax return the taxpayer allocated 100 percent of his tangible personal property to New York State. Subsequently, he filed a corrected New York State business allocation schedule in which he reported total tangible personal property owned in his business of \$4,305.93, of which \$603.93 was the New York State amount. The difference of \$3,700 represented an automobile used in the business.

The taxpayer used a room in the cellar of his New Jersey residence in his business. The room contained a telephone extension, a file cabinet and a built-in desk. The taxpayer stored some of his business records in the room and made business calls from his home during the evening hours. The taxpayer did not file a certificate of trade name for the doing of business in New Jersey nor did he list his New Jersey telephone in his trade name. His business stationery shows only his New York address.

Section 707 of the Tax Law provides that if an unincorporated business has no regular place of business outside this State all income of the business shall be allocated to New York. While the phrase "regular place of business" has not been defined under this section of the Tax Law, it has been defined for franchise tax purposes as including a bona fide office (See 20 NYCRR 4.11).

It is my opinion that the room in the cellar of the taxpayer's New Jersey home did not constitute a bona fide office or a regular place of business.

For the reasons stated above, I recommend that the decision of the State Tax Commission denying the taxpayer's petition in the above matter be substantially in the form submitted herewith.

/s/

FRANCIS V. DOW

Hearing Officer

February 6, 1968
FVD:nn

Enc.

2-14-68

STATE OF NEW YORK
STATE TAX COMMISSION

IN THE MATTER OF THE APPLICATION

OF

NORMAN G. RISDON & GENEVIEVE RISDON

FOR A REDETERMINATION OF A DEFICIENCY
OR FOR REFUND OF PERSONAL INCOME TAXES
UNDER ARTICLE 22 AND UNINCORPORATED
BUSINESS TAXES UNDER ARTICLE 23 OF THE
TAX LAW FOR THE YEAR 1962

The taxpayers having filed a petition for a redetermination of a deficiency or for refund of personal income tax under Article 22 and unincorporated business tax under Article 23 of the Tax Law for the year 1962, and a hearing having been held in connection therewith at the office of the State Tax Commission, 80 Centre Street, New York, New York on December 18, 1967 before Francis V. Dow, Hearing Officer of the Department of Taxation and Finance, at which hearing the taxpayer, Norman G. Risdon, appeared and testified, and the record having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That the taxpayers filed a nonresident income tax return for the year 1962 in which they reported income from New York sources in the sum of \$17,884.90; that the taxpayer, Norman G. Risdon, filed an unincorporated business tax return for the year 1962 in which he reported business income of \$20,120.50 of which he allocated to New York State $86 \frac{2}{3}$ percent or \$17,437.77.

(2) That a notice of deficiency and statement of audit changes were issued on June 1, 1964 (File No. 2-8340334) determining additional personal income and unincorporated

business taxes and interest due in the sum of \$348.77 on the basis that the taxpayer did not maintain a place of business outside New York State and the income was not allocable.

(3) That the taxpayers reside at Englewood Cliffs, New Jersey; that the taxpayer, Norman G. Riedon, is a food broker representing packers and canners of raisins, peans, canned goods, peaches and spices; that the taxpayer made sales in his business to customers located in New Jersey and New York; that the taxpayer maintained an office during 1962 at 99 Hudson Street, New York, New York.

(4) That on his unincorporated business tax return, the taxpayer listed all of his property connected with his unincorporated business to be within New York State; that on a business allocation schedule (Form No. IT-202-A) subsequently filed by the taxpayer, he claimed that his total tangible personal property in his business was \$4,305.93 of which \$605.93 was located in New York State; that the business property claimed to be without the State was an automobile used by the taxpayer in his business.

(5) That the taxpayer used a room in the cellar of his New Jersey residence in his business; that the room contained a telephone extension, a file cabinet and a built-in desk; that the taxpayer stored some of his business records in his home and made some business calls from his home during the evening hours; that the taxpayer filed no certificate of trade name for the doing of business in New Jersey; that the taxpayer did not list his New Jersey telephone in his trade name; that the taxpayer's stationery shows only his New York office; that the taxpayer has failed to show that his New Jersey home was a bona fide office of the business.

(6) That the gross sales on merchandises or charges of taxpayer for the year amount to \$61,914.10; that the New York State amount of such charges or sales was in the sum of \$31,388.70; that the total amount of wages, salaries and other personal service compensation paid during the year was in the sum of \$23,131.89; that the New York State amount of such compensation for personal service was \$18,131.89; that the taxpayer paid \$5,000.00 to a salesman who worked for the taxpayer in New Jersey.

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

DECIDES:

(A) That during 1962 the taxpayer maintained no regular place of business other than that located in New York City.

(B) That, accordingly, the notice of deficiency and statement of audit changes (File No. 2-8340334) determining additional income and unincorporated business taxes and interest due in the sum of \$348.77 are correct and do not include any tax or charges which could not have been lawfully demanded and the taxpayer's petition for redetermination of a deficiency for the year 1962 with respect thereto be and the same is hereby denied.

DATED: Albany, New York on this 13th day of March , 1968.

STATE TAX COMMISSION

/s/

JOSEPH H. MURPHY

PRESIDENT

/s/

A. BRUCE MANLEY

COMMISSIONER

/s/

SAMUEL E. LEPLER

COMMISSIONER