

STATE OF NEW YORK
STATE TAX COMMISSION

-----X
IN THE MATTER OF THE APPLICATIONS

OF

ROBERT W. ROSS

FOR REVISION OR REFUND OF UNINCORPORATED
BUSINESS TAXES UNDER ARTICLE 16-A OF THE
TAX LAW FOR THE YEARS 1956, 1957, 1958
AND 1959
-----X

HEARING UNIT - File Copy

TAX U. B. T.

ART. 16A SECS. 374, 386 e

KEY WORDS MANUFACTURERS

Representatives; ~~not~~ ~~an~~ ~~employee~~

CROSS SECS. NOT AN employee.

CASE LAW CITATIONS

REMARKS

Robert W. Ross, having duly filed applications for revision or refund of unincorporated business taxes paid under Article 16-A of the Tax Law for the years 1956, 1957, 1958 and 1959, and a hearing having been held in connection therewith at the office of the State Tax Commission, The Governor Alfred E. Smith State Office Building, Albany 1, N. Y., on May 3, 1961, before Laurence S. Gifford, Hearing Officer, of the Department of Taxation and Finance, at which hearing the taxpayer appeared personally and testified, being represented by William J. MacKay, Of Counsel, 301 Wilson Building, Syracuse 2, New York, and Allen C. Ritz, Certified Public Accountant, 119 Columbia Avenue, Syracuse 7, New York, and the record having been duly examined and considered, the State Tax Commission hereby finds:

(1) That the taxpayer filed returns of income under Article 16-A of the Tax Law for each of the calendar years 1956, 1957, 1958 and 1959; that he reported thereon the total amounts of his commission income as a manufacturer's representative for Production Products Company, Inc., Mercury Aircraft, Inc., Barthelmes Manufacturing Company, Inc., Alliance Tool and Die Corp., and Alliance Mold Company, Inc.

(2) That thereafter and within the time prescribed by Section 374 of the Tax Law, the taxpayer filed applications for refund of unincorporated business taxes paid for each of such years on his income as a sales representative; that such claims were based on the grounds that the taxpayer was not carrying on an unincorporated business as he did not maintain an office or have employees.

(3) That during the above years, the taxpayer did not maintain an office or hire employees in connection with the carrying on of his activities as a sales representative for the above cited principals; that each of his principals knew that he represented the other principals; that none of the principals had any type of arrangement among themselves and/or the taxpayer requiring the taxpayer to devote a specified portion of his working time to the affairs of any one principal; that the taxpayer attempted to promote the products of more than one of his representatives when calling on a particular customer where warranted; that the taxpayer was not required to render reports to any of his principals; that none of the principals treated the taxpayer as an employee for Federal tax purposes, for insurance purposes, or for any other purpose.

(4) That the taxpayer estimated that approximately 10% of his total commission income was from out-of-state sources; that if 10% of the total commission income of the taxpayer and applicable expenses were excluded from taxable income as out-of-state net income, after reflecting necessary adjustments for service credits properly allowable under Section 386-e of the Tax Law, the unincorporated business taxes on the remainder of the income, as representing New York State income, would then exceed the taxes originally computed and paid for each respective year here involved, as follows:

<u>Year</u>	<u>Total net taxes computed and paid</u>	<u>Total taxes due on basis of New York income only</u>	<u>Indicated tax refund</u>
1956	\$247.00	\$203.81	\$43.19
1957	697.45	584.21	113.24
1958	222.14	181.43	40.71
1959	307.34	254.29	53.05

(5) That in view of all the circumstances, it is hereby found that the taxpayer carried on his sales activities during each of the above years as an independent contractor rather than as an employee.

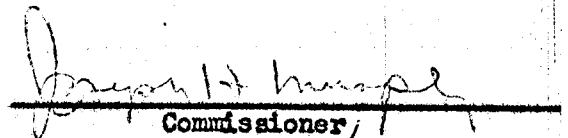
Upon the foregoing findings and all the evidence presented herein, the State Tax Commission hereby

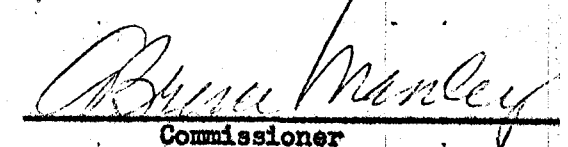
DETERMINES:

That the taxpayer's activities as a sales representative during each of the above years for his several principals constituted the carrying on of an unincorporated business, within the meaning and intent of Section 386 of the Tax Law, as the taxpayer was not an employee of such principals; that, accordingly, the taxpayer's income from his activities as a sales representative, to the extent derived from New York State sources, is subject to the unincorporated business tax under Article 16-A of the Tax Law; that the unincorporated business taxes paid by the taxpayer for the years here involved under such article on his income from New York State sources are correct and represent taxes legally due and owing; that the taxpayer is entitled to refund of unincorporated business taxes paid on the portion of his income as a sales representative from sources without the State of New York in the respective amounts for the above years, as set forth in paragraph numbered (4) above, and it is so ORDERED.

Dated: Albany, N. Y., June 30, 1969.

THE STATE TAX COMMISSION


Commissioner


Commissioner


Commissioner

file
Mr. Newman

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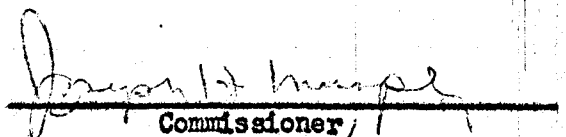
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