

STATE OF NEW YORK  
STATE TAX COMMISSION

*Sayers, Lillian  
Personal Income  
Article 16*

In the Matter of the Petition

of

Lillian Sayers

For a Redetermination of a Deficiency or  
a Refund of Personal Income  
Taxes under Article(s) 16 of the  
Tax Law for the (Year(s) 1956

AFFIDAVIT OF MAILING  
OF NOTICE OF DECISION  
BY (CERTIFIED) MAIL

State of New York  
County of Albany

Claire A. Draves, being duly sworn, deposes and says that  
she is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 13th day of January, 1971, she served the within  
Notice of Decision (or Determination) by (certified) mail upon Irwin L.

Feinberg, CPA (representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Irwin L. Feinberg, CPA  
52 Broadway  
New York, New York 10004

and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative  
of) petitioner herein and that the address set forth on said wrapper is the last  
known address of the (representative of the) petitioner.

Sworn to before me this

13th day of January, 1971.

Linda Wilson

Claire A. Draves

STATE OF NEW YORK  
STATE TAX COMMISSION

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Notice of Decision (or Determination) by (certified) mail upon Lillian Sayers

(representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: Lillian Sayers  
21 East 66th Street  
New York, New York 10021

and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Post Office Department within the State of New York.

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Sworn to before me this

13th day of January, 1971.

Linda Wilson

Claire A. Draves

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Application	:	
of	:	
LILLIAN SAYERS	:	DETERMINATION
for Revision or Refund of Personal Income	:	
Taxes under Article 16 of the Tax Law	:	
for the year 1956	:	

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Applicant, Lillian Sayers, has filed an application for revision or refund of personal income taxes under Article 16 of the Tax Law for the year 1956. (File No. B745987) A formal hearing was held before Solomon Sies, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York, on November 20, 1967, at 10:00 A.M. Feinberg & Kadison by Irwin L. Feinberg, C.P.A. appeared for the applicant.

FINDINGS OF FACT

1. Applicant, Lillian Sayers, filed a New York State Income Tax Resident Return for the year 1956.
2. On February 25, 1960, the Income Tax Bureau, issued a notice of additional assessment against applicant, Lillian Sayers, imposing additional income tax upon the income received by her for the year 1956 upon the grounds that business expenses of \$4,985.55 were unsubstantiated and that income of \$20,000.00 from the sale of patents was normal income, subject to normal tax rates and not capital gains tax rates, and accordingly assessed additional income tax against her in the sum of \$1,113.99.
3. Applicant, Lillian Sayers, conceded that the business expenses of \$4,985.55 were unsubstantiated and should be disallowed.

4. Applicant, Lillian Sayers was a designer and inventor of new and better brassieres. In 1947 the United States of America granted to her letters patent for improvements in brassieres which became known by the trade names "Disguise" and "Hi-Lo Witchery".

5. In 1949 applicant, Lillian Sayers, entered into a written agreement with Exquisite Form Brassiere, Inc., wherein she sold to it the exclusive right to manufacture and sell throughout the United States brassieres containing the invention or improvements claimed in the aforesaid letters patent for the term of said patents. She further agreed to assign the patents to the corporation. In consideration for the sale, she was to receive as royalties each year during the lives of the patents a percentage of net sales. In the event the corporation became insolvent, or paid royalties of less than \$1,000.00 per annum, or was 60 days in arrears in payment of royalties, or discontinued the manufacture or sale of brassieres then the patents were to revert to the applicant. The corporation had the right to assign the agreement to a successor in interest to its entire business.

6. In addition to royalty payments applicant, Lillian Sayers, received a salary from the corporation for her services in designing, supervising the production of and promoting brassieres. This agreement was oral.

7. During the year 1956, applicant, Lillian Sayers, received from the corporation a salary of \$10,400.00 and royalties of \$20,000.00.

#### CONCLUSIONS OF LAW

A. That the transfer by applicant, Lillian Sayers to Exquisite Form Brassiere, Inc. of all of her substantial rights in her patents for improvements in brassieres constituted the sale of a capital asset held for more than 6 months. Internal Revenue

Code Section 1235; that it constituted the sale of a capital asset even though the royalty payments were payable periodically over a period generally coterminus with the corporation's use of the patent and contingent on the amount of sales. Internal Revenue Code Reg. 1.1235-1(a); that retention by her of the right to a reassignment of the patents upon the happening of certain conditions subsequent did not constitute the retention of substantial rights. Internal Revenue Code Reg. 1.1235-2(b) (2).

B. That the royalty payments received by applicant, Lillian Sayers, were attributable to the transfer of all substantial rights to the aforesaid patents and were not compensation for services rendered to her employer as a designer. Rose Marie Reid 26 TC No. 78(1956).

C. That business expenses of \$4,985.55 were properly disallowed.

D. That the application of Lillian Sayers is granted to the extent of reducing the "taxable balance adjusted" from \$29,985.00 to \$9,985.00 and of reducing the additional tax due from \$1,113.99 to \$288.95 and the notice of additional assessment issued February 15, 1960, is reduced to \$288.95 together with such interest thereon as may be lawfully due and except as so granted the application is in all other respects denied.

Dated: Albany, New York

*January 11, 1971*

STATE TAX COMMISSION

*Norman Gallivan*

COMMISSIONER

*Barbara Mauley*

COMMISSIONER

*Milton Koerner*

COMMISSIONER