

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition of

JOHN R. CLEVELAND, JOHN G. CLEVELAND &
MELVIN E. ALLEN, Individually and as co-
partners d/b/u the firm name and style of

CLEVELAND, CLEVELAND & ALLEN ;

For a Redetermination of a Deficiency or
a Refund of Personal Income & Unincorporated
Taxes under Article(s) 22 & 23 of the Business
Tax Law for the (Year(s) 1965 & 1967 ;

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

State of New York
County of Albany

Martha Funaro , 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 12th day of July , 1973 , she served the within
Notice of Decision (or Determination) by (certified) mail upon Cleveland, Cleveland
& Allen (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Cleveland, Cleveland & Allen
Rural Route
Chestertown, New York 12817
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

12th day of July , 1973.

Lynn Wilson

Martha Funaro

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County of Albany

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age, and that on the 12th day of July , 1973, she served the within
Notice of Decision (or Determination) by (certified) mail upon Melvin E. Allen

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Melvin E. Allen
Jordan Street
Schroon Lake, New York 12870

and by depositing same enclosed in a postpaid properly addressed wrapper in a
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Chestertown, New York 12817

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Lynn Wilson

Martha Funaro



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A

STATE CAMPUS
ALBANY, N. Y. 12226

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION

NORMAN F. GALLMAN, ~~President~~ PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

Dated: Albany, New York

July 12, 1973

**Cleveland, Cleveland & Allen
Rural Route
Chestertown, New York 12817**

Gentlemen:

Please take notice of the **DECISION**
of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to
Section(s) **690 & 722** of the Tax Law, any
proceeding in court to review an adverse deci-
sion must be commenced within **4 Months**
from the date of this notice.

Any inquiries concerning the computation of tax
due or refund allowed in accordance with this
decision or concerning any other matter relative
hereto may be addressed to the undersigned.
These will be referred to the proper party for
reply.

Very truly yours,

L. Robert Leisner
HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau



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DEPARTMENT OF TAXATION AND FINANCE

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EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

Dated: Albany, New York

July 12, 1973

**Melvin B. Allen
Jordan Street
Schroon Lake, New York 12870**

Dear Mr. Allen:

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HEARING OFFICER

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cc: Petitioner's Representative
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cc: Petitioner's Representative
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In the Matter of the Petition :
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JOHN R. CLEVELAND, JOHN G. CLEVELAND and :
MELVIN E. ALLEN, Individually and as co- :
partners d/b/u the firm name and style of :
CLEVELAND, CLEVELAND & ALLEN : DECISION
for Redetermination of a Deficiency or :
for Refund of Personal Income and Unin- :
corporated business Taxes under Articles :
22 and 23 of the Tax Law for the Years :
1965 and 1967. :

Petitioners, Cleveland, Cleveland & Allen, petitioned for a redetermination of deficiencies in personal income and unincorporated business taxes under Articles 22 and 23 of the Tax Law for the years 1965 and 1967.

The case was submitted for decision on information contained in the file.

The Income Tax Bureau was represented by Saul Heckelman, Esq., Counsel.

ISSUE

Could payments to partners as salaries be deducted from the income subject to unincorporated business tax?

FINDINGS OF FACT

1. Petitioners, Cleveland, Cleveland & Allen, timely filed New York State unincorporated business tax returns for the years 1965 and 1967.

2. A Notice of Determination of deficiencies in unincorporated business taxes for the years 1965 and 1967 was issued on February 24, 1969, against the taxpayers under File No. 832.

3. A Notice of Determination of a Deficiency in personal income tax under Article 22 was issued against Melvin E. and Elizabeth Allen for the year 1965 for \$32.94 under File No. 34842770.

4. The taxpayers petitioned for redetermination of the deficiencies.

5. No evidence has been forwarded respecting an adjustment for a mathematical error and the adjustment is not in dispute.

6. The only issue is whether the partnership could deduct all of the partners' income paid as salaries. The deduction of 20% of the partners' salaries, (not to exceed \$5,000.00) was allowed by the Income Tax Bureau pursuant to section 708 of the Tax Law. It further appears that while the return was filed, no tax was paid or computed in the return, although there was profit of over \$12,000.00 for each year in issue. A copy of the Statement of Audit Changes is affixed hereto as an appendix.

7. No evidence has been submitted to controvert the asserted individual deficiency against Melvin E. Allen.

CONCLUSIONS OF LAW

A. In a partnership, the full payments to the partners may not be used as total deductions to reduce the unincorporated business income subject to tax. The salaries are subject to limitations of 20% or not more than \$5,000.00 under section 708 of the Tax Law.


B. The taxpayers' petitions are denied and the determinations of deficiencies are sustained under File No.'s 832 and 34842770. (See appendix).

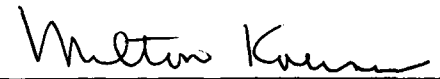
C. Pursuant to the Tax Law, interest on the tax shall be added to the total amount due until paid.

DATED: Albany, New York
July 12, 1973

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER

STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE
Income Tax Bureau
State Campus
Albany, N. Y. 12226

OA

STATEMENT OF AUDIT CHANGES

JOHN R. CLEVELAND, JOHN G. CLEVELAND AND
MELVIN E. ALLEN, Individually and as co-
partners d/b/u the firm name and style of:

58-S

2/24/69

Date

CLEVELAND, CLEVELAND, & ALLEN
Rural Route
Chestertown, New York 12817

File Number : 832
Taxable Year(s) : 1965 - 1967
S.S. No. Taxpayer:
S.S. No. Spouse :
DIVISION NO. : AG 3P - 50

Explanation:

An error is corrected in addition of 1965 partnership business deductions resulting in additional net income. Since you failed to compute and pay the partnership unincorporated business tax due for the taxable years 1965 and 1967, your tax liability is stated as follows:

UNINCORPORATED BUSINESS TAX

	1965	1967
Corrected net profit from business (1965)	\$12,893.01	
Partnership ordinary income (1967)		\$12,622.18
Less: Salary credit @ 20%	2,579.60	\$ 2,524.44
Net income	\$10,313.41	\$10,097.74
Exemption	5,000.00	5,000.00
Taxable business income	\$ 5,313.41	\$ 5,097.74
Unincorporated business tax due	\$ 212.74	\$ 203.89

TOTAL UNINCORPORATED BUSINESS TAX DUE

\$416.63

WJY: jr

Interest 16.97
TOTAL \$463.60

CONSENT TO FINDINGS: Pursuant to Section 681 (f) of the Tax Law, the restrictions provided in Section 681(c) of the Tax Law are waived and consent is given to the assessment and collection of the above deficiencies, together with interest on the tax as provided by law; and the above overassessments are accepted as correct. (If a JOINT return was filed both taxpayers must sign)

Taxpayer _____ Date _____ Taxpayer _____ Date _____