

## BUREAU OF LAW

## MEMORANDUM

*Unincorporated Business Tax  
Determination A-2  
Clement, Joseph J.  
1965*

TO: Commissioners Murphy, Palestin & Macduff

FROM: Vincent P. Molineaux

SUBJECT: Joseph J. Clement  
Applications for revision or refund  
1953 through 1959

Hearing on the applications for revision or refund was conducted at Buffalo, New York October 20, 1965 in which the sole question at issue was timeliness of the applications for revision or refund.

The applications for the years 1953 through 1959 were filed December 19, 1963, which was more than the two-year limitation provided in section 374 of the Tax Law.

In the course of the hearing, petitioner claimed refund under the authority of section 373-3 of the Tax Law granting to the Tax Commission the power to refund money erroneously or illegally collected. His contention was that on the face of the return, he was an industrial designer and not subject to the unincorporated business tax and that the tax was erroneously collected. There was a question of fact as to the applicant's occupation and a question of law as to the applicability of the tax to such occupation and section 373-3 would not apply.

Since no provision is made for application to the Commission under section 373 of the Tax Law, no reference is made to that section in the determination and it is recommended that the determination be in the form submitted.

/s/

VINCENT P. MOLINEAUX

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Senior Attorney

VPM:rlp

December 6, 1965 (Dec. 13, 1965)

Approved M.S.  
E.H.B.

**STATE OF NEW YORK  
STATE TAX COMMISSION**

.....  
**IN THE MATTER OF THE APPLICATION OF**

**JOSEPH J. CLEMENT**

**FOR REVISION OR REFUND OF UNINCORPORATED  
BUSINESS TAXES UNDER ARTICLE 16-A OF THE  
TAX LAW FOR THE YEARS 1953 THROUGH 1959**  
.....

The petitioner having filed applications for revision and refund of taxes paid under Article 16-A of the Tax Law for the years 1953 through 1959, and a hearing having been held before Vincent P. Holmstrom, hearing officer of the Department of Taxation and Finance, and the record having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That the petitioner filed personal income and unincorporated business tax returns for the calendar years 1953 through 1959 and paid the tax shown to be due thereon.

(2) That applications for refund for the years 1953 through 1959 were filed with the Department of Taxation and Finance on December 19, 1963.

Upon the foregoing facts and the evidence presented herein, the State Tax Commission

**DETERMINES:**

That the applications for revision or refund were not filed within two years from the date of the filing of the returns or the payment of tax as provided in section 374 of the Tax Law. Therefore, the applications for revision or refund filed

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in respect to said assessments are hereby denied.

DATED: Albany, New York, this 20th day of December

1965.

**THE STATE TAX COMMISSION**

/s/

JOSEPH H. MURPHY

**PRESIDENT**

/s/

IRA J. PALESTIN

**COMMISSIONER**

**COMMISSIONER**