

Unincorp. Bus. Tax Determin.  
BUREAU OF LAW A-2

## MEMORANDUM Corning, Charles T.

TO: Commissioners Murphy, Palestin and Macauff

FROM: Martin Schapiro, Hearing Officer

SUBJECT: Charles T. Corning, application for revision or refund of Unincorporated Business Taxes under Article 16-A of the Tax Law for the years 1955 and 1956

A hearing with reference to the above matter was held before me at 80 Centre Street, New York, N. Y., on October 27, 1964. The appearances and the evidence produced were as shown in the stenographic minutes and exhibits submitted herewith. Since common issues were involved, this hearing was held in connection with the taxpayer's petition for redetermination of a deficiency of unincorporated business taxes for the year 1960. A separate recommendation and proposed decision pertaining to such year is being submitted by me.

The issue raised herein is whether or not the income received by the taxpayer, a salesman of paper products, was salary income received as an employee, or income derived from the taxpayer's activities in his own unincorporated business and subject to the unincorporated business tax.

The facts herein more fully set forth in the proposed determination disclose that the taxpayer during 1955 and part of 1956 was employed as a salesman of paper products for one principal, receiving \$900 per month for servicing old accounts plus commissions on new accounts procured by the taxpayer. Federal withholding tax and social security payments were deducted by the principal. The taxpayer terminated his employment with his principal during 1956 and became a salesman on a commission basis for three other firms, none of which deducted any withholding tax or social security payments. During all of 1955 and 1956, the taxpayer maintained his own office, paid the rent therefor and incurred office expenses, which rent and expenses were not reimbursed by any of the principals. The taxpayer was never under any strict supervision of any of his principals. The testimony shows that the taxpayer used the office extensively in connection with his activities. I am of the opinion that since the taxpayer maintained an office during the years involved paying the rent therefor and other expenses which were not reimbursed by the principal, the

taxpayer's entire income was derived from his own unincorporated business and subject to unincorporated business tax. I have, therefore, prepared a proposed determination denying the taxpayer's application for revision or refund.

For the reasons stated above, I recommend that the decision of the Tax Commission in this matter be substantially in the form submitted herewith.

/s/

MARTIN SCHAPIRO

Hearing Officer

MS:ca  
Enclosure

November 30, 1964

/s/

V. P. M.

Approved

/s/

E. H. BEST

Approved

**STATE OF NEW YORK**

**STATE TAX COMMISSION**

**-----**  
**IN THE MATTER OF THE APPLICATIONS OF**

**CHARLES T. CORNING**

**FOR REVISION OR REFUND OF UNINCORPORATED  
BUSINESS TAXES UNDER ARTICLE 16-A OF THE  
TAX LAW FOR THE YEARS 1955 AND 1956**  
**-----**

Charles T. Corning having duly filed applications for revision or refund of unincorporated business taxes assessed under Article 16-A of the Tax Law for the calendar years 1955 and 1956, and a hearing having been held in connection therewith at the office of the State Tax Commission, 80 Centre Street, New York, New York before Martin Schapiro, Hearing Officer of the Department of Taxation and Finance, at which hearing the taxpayer appeared in person and testified, and the record having been duly examined and considered,

**The State Tax Commission hereby finds:**

(1) That personal income tax returns having been filed for the calendar years 1955 and 1956 and no unincorporated business tax returns having been filed for such years, assessments were thereafter issued on December 16, 1959 (Assessment Nos. B-707521 and B-707522 for the years 1955 and 1956, respectively) on the ground that the activities of the taxpayer during the years 1955 and 1956 constituted the carrying on of an unincorporated business subject to the provisions of Article 16-A of the Tax Law.

(2) That during the years involved and prior thereto, the taxpayer was a salesman of paper products servicing the New York metropolitan area; that during 1955, the taxpayer

represented one principal only, the Brown Container Company, which during such year became a division of the Olin Mathieson Chemical Corp.; that the taxpayer continued to represent such principal until sometime during the latter half of 1956, at which time the taxpayer's connection with such principal terminated; that the taxpayer received \$900 per month for servicing old accounts plus commissions on the sale of the principal's products to new accounts; that the principal deducted Federal withholding taxes and social security payments; that during the remainder of the year 1956, the taxpayer was simultaneously engaged as a salesman solely on a commission basis by three firms, Shelton Manufacturing Co., Inc., Richmond Container Corp., and Bell Fibre Corp.; that these firms did not deduct any withholding taxes or social security taxes from the taxpayer's commissions.

(3) That during the years involved and prior thereto, the taxpayer maintained an office in New York City for which he paid the rent on a month-to-month basis; that the taxpayer had other expenses in connection with the office, including telephone, supplies and stenographic service, for which expenses, including rent, the taxpayer was not reimbursed by any of the principals; that the Olin Mathieson Chemical Corp. had a sales office located in New York City; that the taxpayer, however, although selling for such principal during the latter part of 1955 and the earlier part of 1956, was never connected with such sales office.

(4) That with the exception of the old accounts serviced by the taxpayer, the taxpayer was required to seek new business; that although the taxpayer was required to telephone daily to the principal office, the taxpayer was not subject to any strict supervision by the principals; that although the principals were not concerned with the hours of work, the taxpayer contends

that he was required to spend a good deal of time at his office because of the nature of the personal services extended by the taxpayer.

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

(A) That during the years 1955 and 1956, the taxpayer's income derived from his activities as a salesman was earned in the taxpayer's own unincorporated business and not as an employee subjecting such income to the unincorporated business tax imposed by Article 16-A of the Tax Law.

(B) That, accordingly, the unincorporated business tax assessments issued for the calendar years 1955 and 1956 are affirmed; that such assessments are correct and do not include any other taxes or charges which are not lawfully due and owing.

Dated: Albany, New York this 26th day of August, 1956.

**STATE TAX COMMISSION**

/s/

**JOSEPH H. MURPHY**

**PRESIDENT**

**COMMISSIONER**

/s/

**JAMES R. MACDUFF**

**COMMISSIONER**

## BUREAU OF LAW

## MEMORANDUM

*Unincorp. Bus. Tax Determination*  
*Corning, Charles T. & Elizabeth H.*  
*A-2*

TO: Commissioners Murphy, Palestin and Macduff

FROM: Martin Schapiro, Hearing Officer

SUBJECT: Charles T. Corning and Elizabeth H. Corning,  
petition for redetermination of a deficiency  
of unincorporated business taxes under Article 23  
of the Tax Law for the year 1960

A hearing with reference to the above matter was held before me at 80 Centre Street, New York, N. Y., on October 27, 1964. The appearances and the evidence produced were as shown in the stenographic minutes and exhibits submitted herewith. Since common issues were involved, this hearing was held in connection with the taxpayer's application for revision or refund of unincorporated business taxes for the years 1955 and 1956. A separate recommendation and proposed determination pertaining to such years are being submitted by me.

The issue raised herein is whether or not the income received by the taxpayer, a salesman of paper products, was salary income received as an employee, or income derived from the taxpayer's activities in his own unincorporated business and subject to the unincorporated business tax.

The record is clear, as set forth in finding of fact No. 2 of the proposed decision submitted by me, that during 1960 the taxpayer, Charles T. Corning, was employed as a salesman by the Consolidated Paper Company at the firm's New York office, at which office the taxpayer was required to and actually did report and work full time during regular working hours; that the taxpayer was not paid on a commission basis but on a straight salary of \$12,000 per annum, from which salary withholding taxes were deducted; that all the expenses incurred by the taxpayer were reimbursed by the employer; that, further, the taxpayer was under the direct supervision and control of the employer. In view of the fact that the taxpayer's income was received as employee's salary, I have prepared a proposed decision vacating the deficiency determining unincorporated business taxes.

For the reasons stated above, I recommend that the decision of the Tax Commission in this matter be substantially

in the form submitted herewith.

/s/

MARTIN SCHAPIRO

Hearing Officer

MSica  
Enc.

November 30, 1964

/s/

V. P.M.

Approved

/s/

E. H. BEST

Approved

**STATE OF NEW YORK**

**STATE TAX COMMISSION**

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**IN THE MATTER OF THE PETITION OF  
CHARLES T. AND ELIZABETH H. CORNING**

**CASE NO.**

**FOR REDETERMINATION OF A DEFICIENCY  
OF UNINCORPORATED BUSINESS TAXES UNDER  
ARTICLE 23 OF THE TAX LAW FOR THE YEAR  
1960**

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Charles T. and Elizabeth H. Corning having duly filed a petition for a redetermination of a deficiency of unincorporated business taxes for the year 1960 (File No. 9899371), and a hearing having been held on October 27, 1964 at the office of the State Tax Commission, 80 Centre Street, New York, New York by Martin Schapiro, Hearing Officer of the Department of Taxation and Finance, at which hearing the taxpayer Charles T. Corning appeared in person and testified, and the record including the testimony taken at the hearing having been duly examined and considered,

**The State Tax Commission finds:**

(1) That the taxpayers filed a New York State personal income tax return for the calendar year 1960 reporting thereon Federal adjusted gross income in the amount of \$12,000; that the taxpayers failed to file an unincorporated business tax return for such year; that the State Tax Commission issued a notice of deficiency of unincorporated business taxes on the ground that the taxpayers' income was derived from the unincorporated business activities of the taxpayer.

(2) That during 1960, the taxpayer Charles T. Corning was employed as a salesman by the Consolidated Paper Company



at the firm's New York office, at which office the taxpayer was required to and actually did report and work full time during regular working hours; that the taxpayer was not paid on a commission basis but on a straight yearly salary of \$12,000 per year, from which gross salary withholding taxes were deducted; that all the expenses incurred by the taxpayer were reimbursed by the employer; that, further, the taxpayer was under the direct supervision and control of the employer.

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

**DECIDES:**

(A) That the taxpayer's income reported on his return for the year 1960 was salary income earned by the taxpayer as an employee.

(B) That, accordingly, the taxpayers' petition for a redetermination of a deficiency of unincorporated business taxes for the year 1960 is granted, and the deficiency is vacated.

Dated: Albany, New York this 26th day of August, 1965.

**STATE TAX COMMISSION**

/s/

JOSEPH H. MURPHY

**PRESIDENT**

**COMMISSIONER**

/s/

JAMES R. MACDUFF

**COMMISSIONER**