

STATE OF NEW YORK

STATE TAX COMMISSION

IN THE MATTER OF THE APPLICATION

OF

MICHAEL F. DELOHERY

FOR REVISION OR REFUND OF UNINCORPORATED
BUSINESS TAXES UNDER ARTICLE 16-A OF THE
TAX LAW FOR THE YEAR 1956.

Michael F. Delohery, the taxpayer herein, having filed an application for revision or refund of unincorporated business taxes under Article 16-A of the Tax Law for the year 1956 and a notice of hearing having been mailed to the taxpayer on January 20, 1965 scheduling a hearing at 80 Centre Street, New York, N.Y. for February 5, 1965 at 9:00 o'clock A.M. before Solomon Sies, Hearing Officer of the Department of Taxation and Finance and the taxpayer having defaulted in appearance thereat and the matter having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That the taxpayer filed a personal income tax return for the year 1956 to which was attached Form IT-202 (unincorporated business tax return) in which he reported gross business income as a sales representative in the sum of \$18,909.71 and net income of \$3,524.59, as a result of which he did not pay any unincorporated business tax for said year; that in addition thereto, the taxpayer reported in Item 10 of said return salary income from Stappers Equipment Co., Inc. in the sum of \$13,618.74; that on May 21, 1959, the Department of Taxation and Finance made an additional assessment against the taxpayer holding that the salary income actually constituted additional business income subject to unincorporated business tax.

(2) That during the year 1956 the taxpayer was engaged as a sales representative for Eastern Wiping Materials Co., Inc. of New York City selling wiping rags to oil refinery companies and to chain

gasoline service stations on a straight commission basis; that during said year the taxpayer was engaged as sales representative for Kerrigan Iron Works having its sales office in New York City selling iron gratings to oil refineries and chain service stations which were used as catwalks around oil refinery towers and platforms on a straight commission basis; that the commission income received by the taxpayer from the two principals heretofore mentioned was included and set forth by him on his unincorporated business tax return for the year 1956 as heretofore mentioned in Finding #1 above; that the taxpayer during the year 1956 was also engaged as sales representative for Stappers Equipment Co., Inc. selling to oil companies and gasoline service companies, gasoline pumps, U.S. rubber hose, nozzles and hydraulic jacks on a straight commission basis; that the taxpayer covered the metropolitan New York area and simultaneously sold to the same customers the various products of each of the three companies whom he represented; that only one of the said companies, Stappers Equipment Co., Inc. withheld Federal income taxes and paid social security on behalf of the taxpayer; that the activities of the taxpayer on behalf of Stappers Equipment Co., Inc. consisted of primarily obtaining annual contracts for certain kind of equipment so that the customers would order their supplies of equipment directly from the principal.

(3) That in connection with the taxpayer's activities he maintained an office at his home and incurred rental expenses in connection therewith; that the taxpayer's expenses in connection with his activities for all of the principals involved during the year 1956 amounted to \$15,385.12 for which he was not reimbursed by any of the aforementioned principals; that the activities of the taxpayer on behalf of the above principals constituted that of an independent contractor and not that of an employer-employee relationship; that the activities on behalf of Stappers Equipment Co., Inc. were connected and interrelated with his activities on behalf of Eastern Wiping Materials Co., Inc. and Kerrigan Iron Works.

Based upon the foregoing findings, the State Tax Commission hereby

DETERMINES:

(A) That the activities of the taxpayer during the year 1956 as set forth in Finding (2) above were interrelated and connected and that the reported salary income constituted additional business income subject to unincorporated business tax in accordance with Section 386, Article 16-A of the Tax Law; that, accordingly, the assessment for the year 1956 (Assessment No. B-608630) is correct; that said assessment does not include any tax or other charge which could not have been lawfully demanded and that the taxpayer's application for revision or refund with respect to the aforementioned assessment for the year 1956 be and the same is hereby denied.

DATED: Albany, New York on the 27th day of April, 1965.

STATE TAX COMMISSION

/s/

JOSEPH H. MURPHY
Commissioner

/s/

IRA J. PALESTIN
Commissioner

/s/

JAMES R. MACDUFF
Commissioner

Commissioners Murphy, Palestine & Masdoff

Solomon Sles, Hearing Officer

MICHAEL F. DELOHREY

1956 Assessment No. B-608630

Article 16-A

A hearing with reference to the above matter was scheduled before me at 80 Centre Street, New York City, N. Y. for February 5, 1965. The taxpayer defaulted in appearance at said hearing.

The issue involved herein is whether salary income reported by the taxpayer is interrelated and connected with his business income as reported on his unincorporated business tax return for the year 1956.

The taxpayer filed a personal income tax return for the year 1956. Attached thereto was Form IT-202 (unincorporated business tax return) showing a gross income of \$18,909.71 received from Eastern Wiping Materials Co., Inc. and Kerrigan Iron Works, both having offices in New York City. Since the taxpayer only reported net business income in the sum of \$7,524.59 on the unincorporated business tax return, he did not pay any unincorporated business tax.

In connection with the taxpayer's activities on behalf of Eastern Wiping Materials Co., Inc., he sold wiping rags to oil refinery companies and to chain gasoline stations. With respect to his activities on behalf of Kerrigan Iron Works, he sold iron gratings to oil refineries and chain service stations. These iron gratings were used as catwalks around oil refinery towers and for platforms in service stations.

The salary income reported by the taxpayer from Stappers Equipment Co., Inc. represented commissions on sales of gasoline pumps, U.S. rubber hose, nozzles and hydraulic jacks, which were sold to the same oil companies and chain service stations as indicated for the other two principals heretofore mentioned. The taxpayer was paid on a straight commission basis. Only Stappers Equipment Co., Inc. deducted withholding tax and social security taxes. The taxpayer deducted rent and office expenses on his unincorporated business tax return; it appears that the office was maintained at his home. The expenses are partially attributable to the income received from Stappers Equipment Co., Inc. A good portion of the taxpayer's sales efforts for Stappers Equipment Co., Inc. was in obtaining annual contracts from prospective customers for certain equipment which would be ordered directly from the principal. The taxpayer was not required to report periodically at the place of business of the principal, who was only interested in receiving orders. The activities of the taxpayer on behalf of Stappers Equipment Co., Inc. were interrelated and connected with his activities as an independent sales representative for Eastern Wiping Materials and Kerrigan Iron Works which activities,

THESE ARE THE RESULTS OF THE INVESTIGATION

CONDUCTED BY THE BUREAU OF THE INSPECTION

ON THE MATTER OF THE

ALLEGED VIOLATION OF THE

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TO: Commissioners Murphy, Palestin & Macduff

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RE: MICHAEL F. DELOHERRY

the taxpayer concedes, constituted the carrying on of an unincorporated business. Therefore, the salary income should be includable as a additional business income subject to unincorporated business tax in accordance with Section 386, Article 16-A of the Tax Law.

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

APR 9 1965

SOLOMON SIES

Hearing Officer

Approved

Approved

April 15, 1965

SOLOMON ISLES

APR 9 1962

APR 15 1962