

## BUREAU OF LAW

## MEMORANDUM

*Uninc. Tax Determinations*  
*Dorfman David* *T-Z*

TO: Commissioners Murphy, Palestin and Macduff

FROM: Vincent P. Molineaux, Hearing Officer

SUBJECT: David Dorfman  
Petition for redetermination of a  
deficiency or refund of an unincorporated business income tax  
under Article 23 of the Tax Law  
for the year 1960  
File #8461030

A hearing on the above matter was held before me at  
80 Centre Street, New York, New York on July 1, 1965.

The question involved herein is whether income reported  
by petitioner in his personal income tax return is also subject  
to unincorporated business tax and should have been included in  
his unincorporated business tax return.

Petitioner has been an independent wholesale salesman  
for Weston Biscuit Company of Passaic, New Jersey continuously  
since 1940, selling cookies and similar items known in the  
trade as sweet goods. His business is located at 19 Old Mamaronock  
Road, White Plains, New York.

In 1955 petitioner and William Rabin formed a corporation,  
Wafer Sales Corporation, for the sale of ice cream wafers, which  
is a specialized product sold only to ice cream manufacturers  
and used by them in making ice cream sandwiches. The wafers  
are manufactured by Southern Biscuit Company of Richmond,  
Virginia. Petitioner states that he is a 50% stockholder of  
Wafer Sales Corporation and an officer and employee for  
administrative work. He states that he does not sell for  
Wafer Sales Corporation and does not call on the trade. The  
corporation employs 13 outside salesmen and has its office at  
300 East 46th Street, New York, New York.

Petitioner states that in 1959 due to a falling off of  
the sale of the products of Weston Biscuit Company he took on  
in his business at 19 Old Mamaronock Road, White Plains the  
sweet goods line of Southern Biscuit Company who also manufacture  
the wafers sold by Wafer Sales Corporation and that even though  
these products are produced by Southern Biscuit Company they are  
sold to grocery dealers and chain stores and are in no way  
related or sold to the customers of Wafer Sales. Income from  
the sale of the sweet goods of both Weston and Southern are

reported for unincorporated business tax. However, the assessments were imposed upon the salary received from Wafer Sales Corporation. Since the salary received from Wafer Sales Corporation is not interrelated or connected with the income from petitioner's business as a sales representative, it is my opinion that such salary is not subject to unincorporated business tax.

The report on the preliminary hearing states that there was to be a recommendation for cancellation but this was reconsidered based upon petitioner's claim for expenses including plane fares to Southern Biscuit Company in Richmond, Virginia. However, this is explained by his taking on the sweet goods line of Southern in his White Plains business.

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

/s/

VINCENT P. MOLINEAUX

Hearing Officer

/s/

MARTIN SCHAPIRO

APPROVED

/s/

E. H. BEST

APPROVED

July 1, 1966

**STATE OF NEW YORK**  
**STATE TAX COMMISSION**

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**IN THE MATTER OF THE PETITION**

**OF**

**DAVID DORFMAN**

**FOR REDETERMINATION OF DEFICIENCY OR  
REFUND OF UNINCORPORATED BUSINESS TAX  
UNDER ARTICLE 23 OF THE TAX LAW FOR  
THE YEAR 1960**  
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David Dorfman having filed a petition for redetermination of deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the year 1960 (File #8461030) and a hearing having been held at the office of the State Tax Commission at 80 Centre Street, New York, N.Y., on the first day of July, 1963 at 2 p.m. before Vincent P. Molineux, 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 taxpayer filed a New York State unincorporated business tax return for the year 1960 in which he reported taxable income in the sum of \$9,564.13.
- (2) That on April 13, 1964 the State Tax Commission issued a statement of audit changes based upon income received from Hafer Sales Corporation, reported as personal income, considered part of the business income and subject to unincorporated business tax under the provisions of Article 23 of the Tax Law.
- (3) That petitioner's unincorporated business income is from his business conducted at 19 Old Hamarneck Road, White Plains, New York, as sales representative for Weston Biscuit Company of Passaic, New Jersey and Southern Biscuit Company of Richmond, Virginia.

(4) That in addition to his income as sales representative, he also receives income as an officer and employee of Wafer Sales Corporation whose office is located at 130 East 46th Street, New York, N.Y. for whom he does not act in a sales capacity and whose business is separate and apart from petitioner's business as a sales representative and that none of the products sold by Wafer Sales Corporation is sold to purchasers of the products sold through petitioner's business at White Plains, New York.

(5) That petitioner's income from Wafer Sales Corporation is not interrelated or connected with the income from petitioner's business as a sales representative.

Based upon the foregoing findings, the State Tax Commission hereby

**DECIDES:**

That the statement of audit charges adjusting the petitioner's New York State unincorporated business income for the year 1960 is incorrect, that the petition for redetermination is granted, and the notice of deficiency for such year is hereby cancelled and revoked.

**DATED:** Albany, New York, on the 8th day of July, 1966.

**STATE TAX COMMISSION**

/s/

JOSEPH H. MURPHY

**President**

/s/

IRA J. PALESTIN

**Commissioner**

/s/

JAMES R. MACDUFF

**Commissioner**