

1966 Unincorporated Business Tax  
Determinations A-Z  
Goldberg, Burton

Commissioners Murphy, Palestine & Macduff

Selonen Sies, Hearing Officer

BURTON GOLDBERG and WILLIE SALESKY *X-logy*

Application for Revision or Refund of  
Unincorporated Business Taxes under  
Article 16-A of the Tax Law for the  
Year 1959.

A hearing with reference to the above matter was held before me at 80 Centre Street, New York, N.Y. on November 2, 1964. The appearances and the evidence produced were as shown in the stenographic minutes and the exhibits submitted herewith.

The issue involved herein is whether the activities of the taxpayers Burton Goldberg and Willie Salesky during the year 1959 constitute the carrying on of an unincorporated business subject to unincorporated business tax in accordance with the provisions of Section 386, Article 16-A of the Tax Law.

In July, 1956, Burton Goldberg and Willie Salesky entered into an oral arrangement whereby Willie Salesky was to advance certain moneys to Burton Goldberg for the purchase and sale of real property and the profits derived therefrom were to be shared equally. Burton Goldberg did not invest any of his own money in connection with this venture. The real estate transactions were all handled through Burton Goldberg in his own individual name. Title to the real property was taken in the name of Burton Goldberg only and all negotiations, mortgages and arrangements were all handled in Goldberg's name only. Salesky was an attorney and maintained a separate office independent from that of Goldberg. All operations were conducted from a business office of Goldberg used by him in connection with the rental of real properties for his own account.

The facts reveal that for the years 1956 through 1959 Goldberg and Salesky filed partnership returns which reflected a fifty-fifty distribution to each of the joint venturers on profits from the sale of real property and upon which returns, unincorporated business taxes were reported. The returns indicate that the distribution was based upon the entire net income of the partnership venture which included net income from sale of real property in sum of \$106,631.05 less less from net rents in sum of \$9,268.56 received on the properties during the interim period from date of purchase to sale, against which expenses of operation were deducted.

CONFIDENTIAL - SECURITY MATTER

October 1954, 1955

CONFIDENTIAL - SECURITY MATTER

CONFIDENTIAL - SECURITY MATTER

CONFIDENTIAL - SECURITY MATTER

CONFIDENTIAL - SECURITY MATTER

CONFIDENTIAL - SECURITY MATTER

CONFIDENTIAL - SECURITY MATTER

CONFIDENTIAL - SECURITY MATTER

CONFIDENTIAL - SECURITY MATTER

CONFIDENTIAL - SECURITY MATTER

TO: Commissioners Murphy, Palestin & Macduff

RE: BURTON GOLDBERG and WILLIE SALESKY

The partnership return of Goldberg and Salesky filed for the year 1959 shows a net profit from the sale of realty in the amount of approximately \$102,000 and the distribution to each of the partners of approximately \$51,000. The tax of \$3,500 which was not paid was computed on the total net profit of \$102,000. It further appears that the joint venture was engaged primarily as dealers in the sale of real property to customers in the regular course of business. Burton Goldberg testified that he was a real estate operator (Minutes of Hearing pp. 5, 6).

return

Burton Goldberg filed a personal income tax for the year 1959 listing under partnership income, the \$51,000 distribution to him from the Goldberg-Salesky venture together with the net losses and profits from other partnerships. In addition, he also reported rents and royalties under Schedule B showing a net loss of approximately \$30,000. These properties were purchased and sold by Goldberg for his own account. (Minutes of Hearing pp. 9, 10).

The taxpayer, Burton Goldberg, contends that the partnership return was filed in error; that there was, in fact, no partnership in existence between him and Salesky; that Burton Goldberg was engaged in the sale of property for his own account but agreed to pay Willie Salesky 50% of the profits derived from the sale of the properties on the moneys advanced by Salesky.

In the case of Zack v. C.I.R., 25 T.C. 676, it was held that an arrangement whereby petitioner and two sons and a son-in-law agreed to share on a 40-20-20-20 percentage basis, profits and losses on sale of stock of surplus goods for which the petitioner had supplied the funds for purchase and under which profits were subsequently so divided, constituted a joint venture and the Commissioner erred in including entire net profits in the petitioner's income.

In the case of Rosen v. Rosen 126 Misc. 37, 212 NYS 404 it was held there a partnership is created to deal in real estate, either partner may sell the firm land.

In the case of Matter of Salter v. Murphy 11 A.D. 2d 262 the Court held that the State Tax Commission properly sustained assessments of unincorporated business taxes under Article 16-A of the Tax Law on the earnings of a group, of which petitioner was a member, who were bound under an agreement which provided for the production of a radio and television show; that there was substantial evidence that the agreement created a partnership under Subdivision 11 of Section 390 of the Tax Law.



**TO: Commissioners Murphy, Palestine & Macduff**

**RE: BURTON GOLDBERG and WILLIE SALESKY**

The taxpayer Burton Goldberg also contends that the losses sustained by him in connection with his activities with the purchase and sale of real property for his own account reported in his individual income tax return should be offset and deducted from the unincorporated business tax computation on the unincorporated business tax return of Goldberg and Salesky, in accordance with Section 386-f of the Tax Law. It is to be noted that the taxpayer Burton Goldberg did not report on his individual tax return for 1959 any unincorporated business conducted by him. This contention is without merit, and Section 386-f has no application since the taxpayer was not taxable for unincorporated business tax with respect to his activity in the purchase and sale of real property for his own account.

I am of the opinion that Burton Goldberg and Willie Salesky were engaged in a joint venture as dealers holding real property primarily for sale to customers in the ordinary course of trade or business; that such joint venture was conducted with continuity and regularity for a period of over four years, and that the same constituted a "partnership" in accordance with Subdivision 11, Section 350 of the Tax Law, and that the income derived therefrom was subject to unincorporated business taxes in accordance with the provisions of Section 386 of the Tax Law.

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

JUN 22 1966

SOLOMON SIES

Hearing Officer

/s/

M. SCHAPIRO

Approved

/s/

S. HECKELMAN

Approved

SS:hm

(July 28, 1966)





STATE OF NEW YORK  
STATE TAX COMMISSION

.....  
IN THE MATTER OF THE APPLICATION

OF

BURTON GOLDBERG and WILLIE SALESKY

FOR REVISION OR REFUND OF UNINCORPORATED  
BUSINESS TAXES UNDER ARTICLE 16-A OF THE  
TAX LAW FOR THE YEAR 1959  
.....

Burton Goldberg, one of the taxpayers herein, having filed an application for revision or refund of unincorporated business taxes under Article 16-A of the Tax Law for the year 1959 and a hearing having been held in connection therewith at the office of the State Tax Commission, 80 Centre Street, New York, N.Y. on the 2nd day of November, 1961 before Solomon Sles, Hearing Officer of the Department of Taxation and Finance and the taxpayer having appeared personally and having been represented by Norton Brown, C.P.A., testimony having been taken and the matter having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That the partnership return of the partnership of Burton Goldberg and Willie Salesky and unincorporated business tax return of said partnership was filed for the year 1959; that the unincorporated business tax return indicated an allowance for partners' services in the sum of \$10,000.00 and an exemption of \$5,000.00; that the expenses reported amounted to \$41,143.99 which included salary, office supplies, electric, fuel, sundries and pay roll taxes; that the address of the business indicated on said returns was 318 East 149 Street, Bronx, N.Y.; that the partnership return indicated a distribution of \$51,661.24 to each of the co-partners, Burton Goldberg and Willie Salesky; that unincorporated business tax was computed on said return in the sum of \$3,499.50; that said return was filed without a remittance and that no part of the unincorporated business tax computed to be due has been paid; that on April 13, 1961, the taxpayer, Burton Goldberg

filed an application for revision or refund of the unincorporated business tax of the aforementioned partnership for the year 1959 contending that the partnership return and unincorporated business tax return were filed in error; that Willie Salosky was not a co-partner with the taxpayer Burton Goldberg and that no unincorporated business tax was due.

(2) That in July, 1956 Burton Goldberg and Willie Salosky entered into an oral arrangement or agreement whereby Willie Salosky was to advance certain monies to Burton Goldberg for the purchase of various parcels of real estate; that Burton Goldberg was not to invest any of his own monies in connection with this venture; that the real estate was to be purchased and held solely in the name of Burton Goldberg or his nominee and that said real estate was to be resold and that the profits derived therefrom were to be shared equally by Burton Goldberg and Willie Salosky; that pursuant to the aforesaid arrangement, sales of real estate were negotiated by Burton Goldberg who handled all the transactions in his own individual name; that title to the real property was taken in the name of Burton Goldberg only and all negotiations, mortgages, arrangements and sales were handled solely in the name of Burton Goldberg; that this arrangement continued until approximately the middle of 1961; that partnership and unincorporated business tax returns were filed by Goldberg & Salosky for the years 1956 through 1959.

(3) That during the year 1959 and prior thereto Burton Goldberg and Willie Salosky were joint venturers engaged as dealers of real estate primarily for resale to customers in the ordinary course of such business; that said sales were various and numerous; that although the purchase and sales of real property were transacted solely in the name of Burton Goldberg they were made for the benefit of both Burton Goldberg and Willie Salosky who shared equally in the profits and losses thereof; that certain repairs and improvements were made on some of the properties purchased for resale; that rents were received from the properties during the interim period from date of purchase to sale; that the activities



of the joint ventures, Burton Goldberg and Willie Salachy as dealers in the resale of real estate primarily to customers in the ordinary course of business constituted a "partnership" within the intent and meaning of Subdivision 11, Section 350 of the Tax Law and the carrying on of an unincorporated business subject to unincorporated business tax in accordance with Section 306, Article 16-A of the Tax Law.

(4) That the taxpayer, Burton Goldberg filed a personal income tax return for the year 1959 in which he reported distribution of income from the partnership of Burton Goldberg and Willie Salachy in the sum of \$51,661.24 and distribution of income from the partnership of Kings Point Associates in the sum of \$2,350.38; that in addition, the taxpayer Burton Goldberg reported on the aforementioned return losses from the partnership of Fox Leggett Associates in the sum of \$5,513.71 and loss from the partnership of Burton Goldberg and Milton Herman in the sum of \$4,742.83 and loss from G.H.S. Associates in the sum of \$2,950.34; that in addition the taxpayer Burton Goldberg reported a loss in rents and royalties on Schedule B in the sum of approximately \$30,000 in connection with the purchase and sale of real property for his own account; that the taxpayer Burton Goldberg did not file any unincorporated business tax return in his own name for the year 1959.

(5) That although the taxpayer Burton Goldberg contends that the sum of approximately \$30,000 loss sustained by him in the purchase and sale of property for his own account should be deducted from the computation of unincorporated business tax pursuant to Section 306-f, Article 16-A of the Tax Law, the aforementioned section has no application since there was not included in the partnership income any amount includible in the net income of the taxpayer and taxable under Article 16-A of the Tax Law.

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

**DETERMINES:**

(A) That the joint venture of Burton Goldberg and Willie Salosky for the year 1959 as real estate dealers primarily engaged in the purchase and sale of real estate to customers in the regular course of business constituted a "partnership" within the intent and meaning of Subdivision 11, Section 390 of the Tax Law; that said joint venture constituted the carrying on of an unincorporated business subject to unincorporated business tax within the intent and meaning of Section 386, Article 16-A of the Tax Law.

(B) That the \$30,000 loss was not a loss attributable to the partnership but solely the taxpayer's personal loss in connection with the purchase and sale of real property for his own account; that such loss was properly excludable from the net income of the partnership for the purpose of computing the unincorporated business taxes assessed herein.

(C) That, accordingly, there can be no recomputation or revision of unincorporated business taxes of the partnership or joint venture of Burton Goldberg and Willie Salosky for the year 1959 and that the application of the taxpayer Burton Goldberg for revision or refund with respect to unincorporated business tax of Burton Goldberg and Willie Salosky for the year 1959 be and the same is hereby denied.

DATED: Albany, New York on the 24th day of August, 1966.

**STATE TAX COMMISSION**

/s/

JOSEPH H. MURPHY

**President**

/s/

IRA J. PALESTIN

**Commissioner**

/s/

JAMES R. MACDUFF

**Commissioner**