

BUREAU OF LAW

MEMORANDUM

Unincorp. Bus. Tax Determin.
A-Z
Goldmeier, Larry

TO: Commissioners Murphy, Palestin and Macduff
FROM: Vincent P. Molineaux, Hearing Officer
SUBJECT: Larry Goldmeier, application for revision or
refund of Unincorporated Business Taxes under
Article 16-A of the Tax Law for the year 1957

A hearing with reference to the above matter was held before me at 80 Centre Street, New York, N. Y., on June 9, 1964. The appearances and the evidence produced were as shown in the stenographic minutes and exhibits submitted herewith.

The petitioner in this case was a full time employee selling bicycles and toys, the products of Stelber Cycle Corporation. In addition he conducted a small business at a different address as a manufacturers' agent for a line of pool tables and a houseware item, namely an outdoor grill for two other companies. He reported and paid Unincorporated Business Taxes on the independent business and it was in no way connected with his income as an employee.

The proposed determination grants the application for revision and cancels the Unincorporated Business Tax assessment on his salary income and I recommend its approval. Please return the file after it has served your purposes.

/s/

V. P. MOLINEAUX

Hearing Officer

VPM:ca
Enclosure

August 17, 1965

/s/

M. SCHAPIRO

Approved

/s/

E. H. BEST

Approved

STATE OF NEW YORK

STATE TAX COMMISSION

IN THE MATTER OF THE APPLICATION OF

LARRY GOLDMEIER

FOR REVISION OR REFUND OF UNINCORPORATED BUSINESS TAXES UNDER ARTICLE 16-A OF THE TAX LAW FOR THE YEAR 1957

The petitioner, Larry Goldmeier, having filed an application for revision or refund of taxes and statutory charges assessed under Article 16-A of the Tax Law for the year 1957 and a hearing having been held in connection therewith on Tuesday, June 9, 1964, at the office of the State Tax Commission, 60 Centre Street, New York, New York, before Vincent P. Malinoux, hearing officer, of the Department of Taxation and Finance, at which hearing the petitioner appeared and testified being represented by Israel Burg, CPA, 430 Seventh Avenue, New York, New York, and the matter having been duly examined and considered

The State Tax Commission finds:

(1) That a return of income under Articles 16 and 16-A of the Tax Law was filed by or on behalf of the petitioner for the year 1957.

(2) That upon audit, the Income Tax Bureau held that income in the amount of \$25,963.45 reported at Item 10 as compensation as an employee from Stalder Cycle Corporation constituted additional business income subject to the unincorporated business tax and that accordingly Assessment No. D-647776 assessing unincorporated business tax in the amount of \$506.97 was issued August 14, 1959.

(3) That Larry Goldmeier, the petitioner herein, duly filed an application for revision or refund of such assessment on July 28, 1960; that thereafter the assessment which is here at issue was reviewed at a conference at the New York City office of the Income Tax Bureau; that as a result thereof, the application was denied under date of December 15, 1960; that thereafter the petitioner filed a demand for hearing dated March 6, 1961.

(4) That the petitioner was a full-time employee of Stalber Cycle Corporation; that he was required to make daily reports to his sales manager; that he was paid a weekly drawing account which was charged off against commissions which were computed on the basis of sales; that deductions were made from his commissions for social security, Federal withholding and Blue Cross; that the only business for Stalber Cycle Corporation was conducted at the office and showroom of Stalber Cycle Corporation; that Stalber also did business through manufacturers' representatives who acted independently but the petitioner was not so classified and was not so treated.

(5) That in addition to his income from Stalber Cycle Corporation, the petitioner also had income in the year in question totalling \$15,744.51 from Hamilton Equipment Company and Superior Industries, which was reported as unincorporated business income and the tax paid; that he was paid by Hamilton on a basis of override commission on an item he had suggested and which he promoted to other salesmen; that Superior Industries sold pool tables for which petitioner acted as independent manufacturers' representative; that for all business other than Stalber, petitioner used the business address of Hamilton Equipment Company, 200 Fifth Avenue, New York, for which he was charged for telephone and desk space, these items being deducted from his commissions.

(6) That the items sold for Stalber were bicycles and not related to the houseware items sold by Hamilton and Superior.

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That upon all the foregoing facts and the evidence presented herein, the State Tax Commission

DETERMINES:

(A) That the income of petitioner from Stalber was that of an employee and was not related or connected with petitioner's independent business as manufacturers' agent for Hamilton and Superior.

(B) That accordingly, the Assessment B-647774 issued against the petitioner for unincorporated business tax for the year 1957 was not authorized and should be cancelled and it is so ORDERED.

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

STATE TAX COMMISSION

/s/

JOSEPH H. MURPHY

President

Commissioner

/s/

JAMES R. MACDUFF

Commissioner