

Commissioners Murphy, Palestin & Macduff

Solomon Sles, Hearing Officer

DAVID GOLDWISCH

1959 Assessment #AB-024644

1960 Assessment #AB024645

Article 16-A

Petition for Redetermination of a Deficiency  
or for Refund of Unincorporated business Taxes  
under Article 23 of the Tax Law for the years  
1961 and 1962

A hearing with reference to the above matters was held  
before me at 80 Centre Street, New York, N.Y. on October 13, 1965.  
The appearances and the evidence produced were as shown in the  
stenographic minutes and exhibits submitted herewith.

The issue involved herein is whether income reported as  
salary constitutes additional business income subject to unincorporated  
business tax in accordance with Sections 386 and 703 of the Tax Law.

The taxpayer during the years in issue operated a retail  
fruit and vegetable store as a sole proprietorship under the trade  
name of Ocean Fruit Market Co. He was also the sole stockholder of  
three corporations, Blue Ribbon Fruit and Produce Inc., Little Three  
Fruit & Produce Inc. and Victory Boys Fruit and Produce Corp. Each  
of these corporations operated fruit and vegetable stores in and  
around the same vicinity as that of Ocean Fruit Market in Brooklyn,  
N.Y. In addition, the taxpayer operated in his individual name Blue  
Ribbon Fruit Company, a central buying unit for the purchase of fruits  
and vegetables primarily for the three corporations and the other retail  
fruit and vegetable store operated in his own name. The taxpayer  
supervised the operation of all five units without any specific division  
of time. He made all decisions concerning all units and formulated  
managerial policies. He listed his occupation as that of supervisor.  
He reported for personal income tax purposes the salary received from  
the various corporations. Only the profit of the sole proprietorships  
was reported for unincorporated business tax purposes. The taxpayer  
maintained separate records for each entity.



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RE: DAVID GOLDWICH

It is to be noted that partial cancellations were issued with respect to the assessments for the years 1959 and 1960 to the extent of \$47.20 and \$64.00, respectively. This is based upon an inadvertence on the part of the Income Tax Bureau to make an allowance for the taxpayer's personal services.

In the case of People ex rel. Moffatt v. Bates, 276 App. Div. 38, aff'd 301 N.Y. 597, cert. den. 340 U.S. 865, the Court, at page 42, stated:

"During the period involved the petitioner also served as a director and officer of certain corporations by which he was retained as consultant. The commission has found that his compensation from such employment was in furtherance of and constituted receipts from his regular business as consultant. We find nothing in the record to warrant any contrary conclusion."

In case of People ex rel. Blaikie v. State Tax Comm., 267 App. Div. 923, the relator was a restaurant and food engineer and an expert as to equipment, operation and managements of restaurants and dining rooms. He contended that: 1. this constitutes the practice of a profession; and 2. that during the tax year services of a similar nature were rendered by him to four specific corporations in the capacity of an employee and not as an independent business. The Court confirmed the determination of the Commission holding the taxpayer subject to unincorporated business tax upon the authority of People ex rel. Tower v. State Tax Commission, 282 N.Y. 407 and Matter of Pennicke v. Mealey, 266 App. Div. 888.

In the instant case, the taxpayer's activities on behalf of the three corporations in the operation of retail fruit and vegetable markets was exactly the same as that of the individual proprietorship operating a separate fruit and vegetable market. In addition, the operation of the central buying unit of fruits and vegetables as a sole proprietorship was primarily on behalf of the three corporations and the other individually operated fruit and vegetable store owned and controlled by the taxpayer.

I am of the opinion that the salary income of the taxpayer from the various corporations was so integrated and interrelated with his business activities and in furtherance thereof as to constitute additional receipts from an unincorporated business in accordance with the provisions of Sections 386 and 703 of the Tax Law.



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RE: DAVID GOLDWICH

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.

MAY 2 - 1966

SOLOMON SIES

Hearing Officer

/s/

M. SCHAPIRO

Approved

/s/

SAUL HECKELMAN

Approved

SS:hm

(May 25, 1966)

Encls.



STATE OF NEW YORK  
STATE TAX COMMISSION

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IN THE MATTER OF THE APPLICATIONS  
OF  
DAVID GOLDWICH  
FOR REVISION OR REFUND OF UNINCORPORATED  
BUSINESS TAXES UNDER ARTICLES 16-A AND  
23 OF THE TAX LAW FOR THE YEARS 1959 &  
1960, RESPECTIVELY  
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David Goldwich, the taxpayer herein, having filed applications for revision or refund of unincorporated business taxes under Articles 16-A and 23 of the Tax Law for the years 1959 and 1960, respectively, and a hearing having been held in connection therewith at the office of the State Tax Commission at 80 Centre Street, New York, N.Y., on the 13th day of October, 1965 before Solomon Sies, Hearing Officer of the Department of Taxation & Finance, at which hearing the taxpayer was represented by Leo S. Wharton, C.P.A., and the matter having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That David and Mary Goldwich filed a Joint Resident Income Tax Return for the year 1959 in which the taxpayer, David Goldwich, reported wages received from Blue Ribbon Fruit and Vegetable Produce, Inc. in the sum of \$5,350, and \$800 from Little Three Fruit & Produce Inc.; that the taxpayer, David Goldwich, also filed an unincorporated business tax return (Form IT-202) in which he indicated that he was engaged in the retail fruit and vegetable business at 1222 Avenue J, Brooklyn, New York, and that the total net income from said business during the year 1959 amounted to \$9,423.20; that on October 2, 1962, the Department of Taxation and Finance made an additional assessment against the taxpayer (Assessment Number AB 024644) holding the salary income reported by the taxpayer to constitute additional business income subject to unincorporated business tax,

and imposed additional unincorporated business tax due in the sum of \$231.71; that thereafter, the Department of Taxation and Finance cancelled a portion of the unincorporated business tax in the sum of \$47.20, which represented allowance to the taxpayer for his services, which was not included in the assessment heretofore mentioned.

(2) That David and Mary Goldwisch filed a Joint New York State Income Tax Resident Return for the year 1960 in which the taxpayer, David Goldwisch, reported salary income from Blue Ribbon Fruit and Produce, Inc. in the sum of \$7,700, and \$300 from Little Three Fruit and Produce, Inc.; that the taxpayer, David Goldwisch, also filed an unincorporated business tax return (Form IT-202) in which he indicated net profit from Blue Ribbon Fruit Company in the sum of \$5,403.96, and net profit from Ocean Fruit Market in the sum of \$5,544.45, for a total net profit of \$9,948.41; that the aforementioned taxpayer deducted, for his services, the sum of \$1,989.69, plus exemption of \$5,000, or the sum of \$2,998.75 subject to unincorporated business tax; that on October 2, 1960, the Department of Taxation and Finance made an additional assessment against the taxpayer for the year 1960 (Assessment Number AB 024645) holding the salary income to constitute additional business income subject to unincorporated business tax, and imposed additional unincorporated business tax due in the sum of \$410.65; that thereafter the Department of Taxation and Finance cancelled \$64. of unincorporated business tax which represented a portion of the amount the taxpayer was entitled to deduct for his personal services on the increased business income subject to tax not included in the above-mentioned assessment.

(3) That during the years 1959 and 1960 and prior thereto, the taxpayer, David Goldwisch, operated a retail fruit and vegetable store in his individual name, under the trade name of Ocean Fruit Market; that he was also the sole stockholder of three domestic

corporations, all organized under the laws of the State of New York, and known as Blue Ribbon Fruit & Produce, Inc.; Little Three Fruit & Produce, Inc., and Victory Boys Fruit & Produce Corp.; that each of these corporations operated fruit and vegetable stores in and around the same vicinity in the Borough of Brooklyn, City and State of New York, which was near, and within the vicinity of the retail fruit and vegetable store operated by the taxpayer under his individual name, under the trade name of Ocean Fruit Market; that in addition, the taxpayer operated under his own name, under the trade name of Blue Ribbon Fruit Company, a central buying unit for the purchase of fruits and vegetables, primarily, for the three corporations and the other fruit and vegetable store operated in his own name; that the taxpayer supervised the operation of all five units without any specific division of same; that he made all decisions concerning all units, and formulated managerial policies; that he listed his occupation on behalf of the corporations as that of supervisor; that he reported for personal income tax purposes the salary received from said corporations; that only the profit of the sole proprietorships were reported for unincorporated business tax purposes; that the taxpayer maintained separate records for each entity.

(4) That the taxpayer's activities on behalf of the three corporations in the operation of fruit and vegetable markets was the same as that of the individual proprietorship operating a separate fruit and vegetable market; that in addition, the operation of the central buying unit of fruits and vegetables as a sole proprietorship was primarily on behalf of the three corporations and the individual proprietorship operating a separate fruit and vegetable market owned and controlled by the taxpayer; that the activities of the taxpayer on behalf of the corporations which he controlled were integrated and

were inter-related with his activities on behalf of the central buying unit which he operated in his own name, and the other fruit and vegetable market which he also operated in his own name; that the salary income reported by the taxpayer in his income tax returns for the years in issue was integrated, inter-related, and connected with his business income <sup>and</sup> in furtherance thereof so as to constitute additional business income subject to unincorporated business tax.

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

**DETERMINES:**

(A) That the salary income reported by the taxpayer for the years in issue were related, connected and integrated with his business income so as to constitute additional income subject to unincorporated business taxes in accordance with the provisions of Section 386, Article 16-A of the Tax Law.

(B) That, accordingly, the assessment for the years 1959 and 1960 (Assessment Numbers AB 024644 and AB 024645, respectively) are correct; that the same do not include any tax or other charge which could not have been lawfully demanded, and that the taxpayer's applications for revision or refund filed with respect thereto be, and the same are hereby denied.

**DATED:** Albany, New York, on the 15th day of June, 1966.

**STATE TAX COMMISSION**

/s/

JOSEPH H. MURPHY

**President**

/s/

IRA J. PALESTIN

**Commissioner**

/s/

JAMES R. MACDUFF

**Commissioner**

STATE OF NEW YORK  
STATE TAX COMMISSION

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IN THE MATTER OF THE PETITION

OF

DAVID GOLDSWICH

FOR REDETERMINATION OF A DEFICIENCY OR FOR  
REFUND OF UNINCORPORATED BUSINESS TAXES  
UNDER ARTICLE 23 OF THE TAX LAW FOR THE  
YEARS 1961 and 1962.  
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David Goldswich, the taxpayer herein, having filed a petition for a redetermination of a deficiency or for refund of unincorporated business taxes under Article 23 of the Tax Law for the years 1961 and 1962, (File number 2-8049758) and a hearing having been held in connection therewith at the office of the State Tax Commission at 80 Centre Street, New York, N.Y., on the 13th day of October, 1965, before Solomon Ales, Hearing Officer of the Department of Taxation and Finance, at which hearing the taxpayer was represented by Leo S. Shorten, C.F.A., and the matter having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That David and Mary Goldswich filed a Joint New York State Income Tax Resident Return for the year 1961 in which the taxpayer, David Goldswich, reported salary income from Blue Ribbon Fruit and Produce, Inc. in the sum of \$4,600; from Little Three Fruit and Produce, Inc. in the sum of \$750, and from Victory Boys Fruit and Produce Corp. in the sum of \$450; that the taxpayer, David Goldswich, reported on Schedule A of said return net profit from business of retail fruit and vegetables in the sum of \$5,417.67; that the taxpayer, David Goldswich, did not file any New York State unincorporated business tax return for the year 1961; that David and Mary Goldswich filed a New York State Income Tax Resident Return for the year 1962 in which

the taxpayer, David Goldwisch, reported salary income from Blue Ribbon Fruit and Produce, Inc. in the sum of \$7,450; from Little Three Fruit and Produce, Inc. the sum of \$100 and from Victory Boys Fruit and Produce Corp. the sum of \$150; that the taxpayer, David Goldwisch, filed an unincorporated business tax return for the year 1962 in which he reported net income from business in the sum of \$4,845.86; that in view of the statutory exemption of \$3,000 aforementioned, the taxpayer did not pay any unincorporated business taxes for the year 1962; that on August 3, 1964, the Department of Taxation & Finance issued a statement of audit charges against the taxpayer, David Goldwisch, for the years 1961 and 1962, imposing additional normal tax of \$27.96 for each of the years 1961 and 1962 as a result of a field audit, and, in addition, held the salary income reported by the taxpayer for the years in issue to constitute additional business income subject to unincorporated business tax, and imposed additional unincorporated business tax plus penalties and interest, and, accordingly, issued a notice of deficiency therefor.

(2) That during the years 1961 and 1962 and prior thereto, the taxpayer, David Goldwisch, operated a retail fruit and vegetable store in his individual name, doing business as Ocean Fruit Market; that he was also the sole stockholder of three domestic corporations all organized under the laws of the State of New York, and known as Blue Ribbon Fruit & Produce, Inc., Little Three Fruit & Produce, Inc., and Victory Boys Fruit & Produce Corp.; that each of these corporations operated fruit and vegetable stores in and around the same vicinity in the Borough of Brooklyn, City and State of New York, which were near, and within the vicinity of the retail fruit and vegetable store operated by the taxpayer under his individual name, under the trade name of Ocean Fruit Market; that in addition, the taxpayer operated under his own name, under the trade name of Blue Ribbon Fruit Company,

a central buying unit for the purchase of fruits and vegetables, primarily, for the three corporations and the other fruit and vegetable store operated in his own name; that the taxpayer supervised the operation of all five units without any specific division of time; that he made all decisions concerning all units, and formulated managerial policies; that he listed his occupation on behalf of the corporations as that of supervisor; that he reported for personal income tax purposes the salary received from said corporations; that only the profit of the sole proprietorships was reported for unincorporated business tax purposes; that the taxpayer maintained separate records for each entity.

(3) That the taxpayer's activities on behalf of the three corporations in the operation of fruit and vegetable markets was the same as that of the individual proprietorship operating a separate fruit and vegetable market; that in addition, the operation of the central buying unit of fruits and vegetables as a sole proprietorship was primarily on behalf of the three corporations and the individual proprietorship operating a separate fruit and vegetable market owned and controlled by the taxpayer; that the activities of the taxpayer on behalf of the corporations which he controlled were integrated and were related with his activities on behalf of the central buying unit which he operated in his own name and the other fruit and vegetable market which he also operated in his own name; that the salary income reported by the taxpayer on his income tax returns for the years in issue was integrated, inter-related, and connected with his business income and in furtherance thereof so as to constitute additional business income subject to unincorporated business tax.

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

**DECISION:**

(A) That the salary income reported by the taxpayer for the years in issue was related, connected and integrated with his business income so as to constitute additional income subject to

unincorporated business taxes in accordance with the provisions of Section 703, Article 23 of the Tax Law.

(B) That, accordingly, the notice of deficiency for the years 1961 and 1962 was properly issued; that the tax interest, penalty and other charges stated therein are correct; that the same do not include any tax or other charge which could not have been lawfully demanded, and that the taxpayer's petition for a redetermination of a deficiency be, and same is hereby dismissed.

DATED: Albany, New York, on the 23rd day of June, 1966.

STATE TAX COMMISSION

/s/

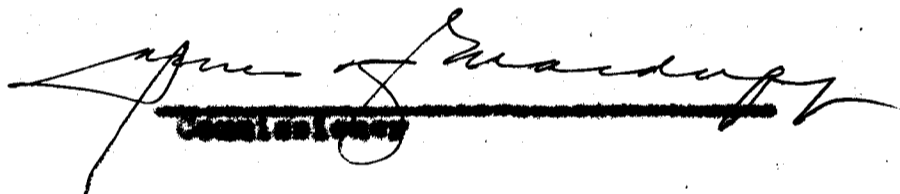
JOSEPH H. MURPHY

President

/s/

IRA J. PALESTIN

Commissioner

  
Commissioner