Unincop. Business Dex Determinations A-Z-Goldwich, Devid

Commissioners Murphy, Palestin & Madduff

Solomon Sies, Hearing Officer

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1959 Assessment #AB-024644 1960 Assessment #AB024645

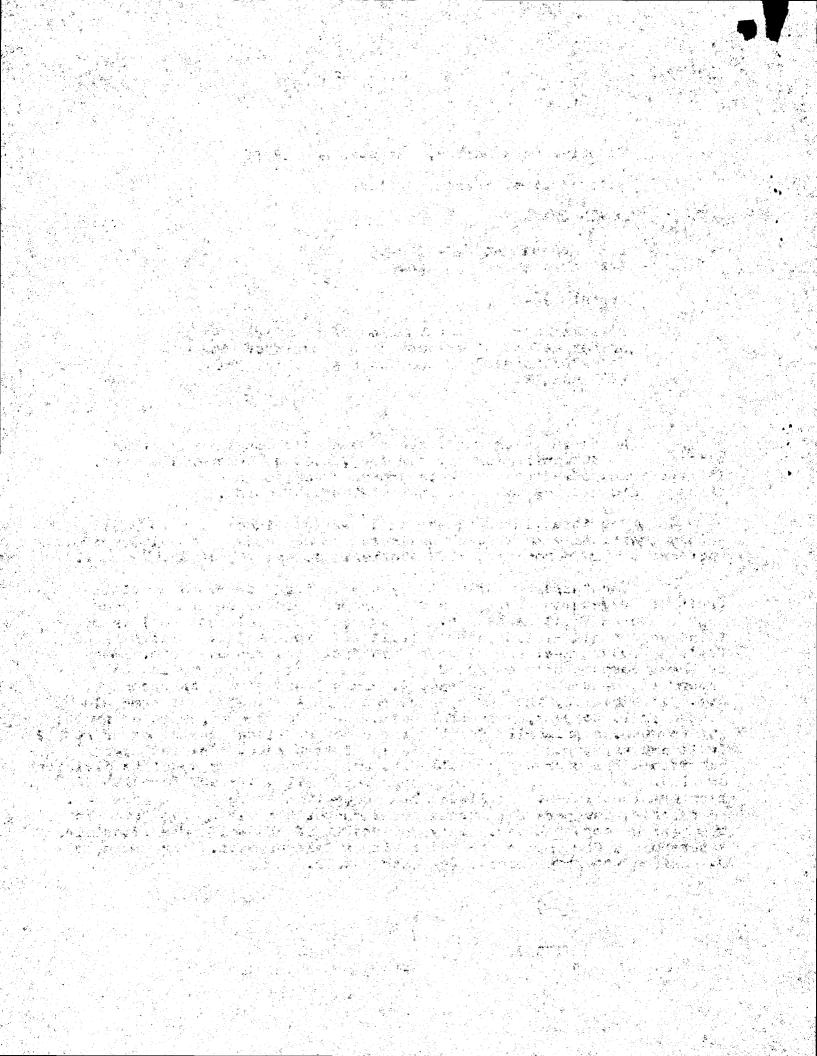
Article 16-A

Petition for Redetermination of a Deficiency or for Refund of Unincorporated dusiness Paxes 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 unineerported 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 Pruit Market Co. He was also the sole stockholder of three corporations, Slue Ribbon Fruit and Produce Inc., Little Three Fruit & Produce Inc. and Victory Boys Fruit and Produce Corp. Bach of these corporations operated fruit and vegetable stores in and around the same vicinity as that of Ocean Fruit Harket in Brooklyh. W. I. In addition, the texpayor operated in his individual name Bine Ribbon Fruit Company, a central buying unit for the purchase of fruits and vegetables primarily for the three corporations and the same result 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 tex 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.



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 Iucome Tax Bureau to make an allowance for the taxpayer's personal services.

In the case of <u>People ex rel. Moffett v. Bates</u>, 276 App. Div. 38. aff'd 301 N.Y. 597, dert. 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 recert to warrant any contrary conclusion."

In case of People ex rel. Blackie v. State Tax Gome. 267
App. Div. 923, the relator was a restaurant and feed 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 helding the tax
payer subject to unincorporated business tax upon the authority of
People ex rel. Tower v. State Tax Commission, 282 N.Y. 507 and Matter
of Fennicks v. Mealey, 266 App. Div. 558.

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 propriesorship 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 baxpayer.

I am of the opinion that the salary income of the varpayer from the various corporations was so integrated and interrelated with his business activities and in furtherance thereof so 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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TO: Commissioners Hurphy, Palestin & Macduff

Page 3

HE DAVID GOLDWICH

For the reasons stated above, I recommend that the determina-tion of the fax 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

ssiha (Nia., 25,1966)

Engls.

SOLOMCN SIES

ALLEYDRH ANAE

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STATE OF NEW YORK STATE TAX COMMESSION

IN THE MATTER OF THE A PLICATIONS

DAVID COLDWICE

FOR REVISION OR REFUND OF UNINCORPORATED BUSINESS TAXES UNDER ARTICLES 16-A AND 23 OF THE TAX LAW FOR THE YEARS 1959 & 1960. RESPECTIVELY

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 Lev for the years 1959 and 1960, Pespectively, and a hearing having been held in connection therevith 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 8. Wharton, C.P.A., and the matter having been duly examined and considered,

The State Tax Commission hereby finds:

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 \$9,123,20; that on October 2, 1962, the Department of Taxation and Finance made an additional assessment against the taxpayer (Assessment Rusber AB (2064)) 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 Santion and Pinance annouled a portion of the unincorporated mainees tax in the sum of \$47.20, which represented allowance to the tempayer for his services, which was not included in the assessment heretofore mentioned.

- (2) That David and Mary Coldwich filed a Joint New York State Income Tax Resident Return for the year 1960 in which the texpayer, Devid Goldwich, reported salary income from blue Ribbon Fruit and Produce, Inc. is the sum of \$7,700, and \$300 from Little Three Fruit and Produce, Inc.; that the taxpager, David Coldmick, also filed an unincorporated business the return (Form IT-202) in which he indicated set profit from Sime Ribson Fruit Company in the sum of \$5.403.96, and set profit from Ocean Fruit Harket in the sum of \$5,544.45, for a total net profit of \$9,948.44; that the aforementioned temperer deducted, for his services, the sum of \$1,989.69. plus exemption of \$5,000, or the sum of \$2,955.75 subject to unincorporated business taxs that on October 4, 1964, the Copartment of Texation and Pinance made an additional assessment against the tempeyer for the year 1960 (Assessment Sumber As ORA645) holding the salary income to constitute edditional business income subject to unincorporated business tax, and imposed additional unincorporated basiness tax are in the sum of \$410.65; that thereafter the Department of Taxation and Finance cancelled (6%. of unincorporated business tax which represented a portion of the enough the taxpayer was entitled to delact for his personal services on the increase business impens subject to but not included in the obeve-mentioned appearant.
- (3) That during the years 1959 and 1960 and prior thereto, the tempeyer, David Goldwich, operated a retail fruit and regetable store in his individual name, unter the trade name of Goosa Fruit Market; that he was also the sale stockholder of three demonstic

corporations, all organized under the laws of the State of New York, and known as flue filbon Fruit & Produce. Inc.; Little Three Fruit a Produce, Inc., and Victory Hoys Prult a Produce Corp.; that each of these apporations operated fruit and vegetable stores in and around the same vicinity in the Morough of Brooklyn, City and State of Now York, which was newr, and within the vicinity of the retail fruit and vegetable store operated by the tempoyer under his individual name, under the trade name of Openn Fruit Market; that in addition, the texpaper operated under his own name, under the trade name of Blue Hibbon Fruit Company, a central buying upit for the purchase of fruits and vegetables, princilly, for the three corporations and the other fruit and vegetable store operated in his own name; that the texpaper 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 ecoupation on behalf of the corporations as that of supervisors that he reported for personal insome tax purposes the salary received from said corporations; that only the profit of the sole proprietorships were reported for unincorporated business tex purposes; that the taxpayer maintained separate records for each entity.

(4) That the texpayor's activities on behalf of the three corporations in the operation of fruit and vegetable merkets was the same as that of the individual proprietorable operating a separate fruit and vegetable markets that in addition, the operation of the central twying unit of fruits and vegetables as a sole proprietorable was primarily on behalf of the three corporations and the individual proprietorable operating a separate fruit and vegetable market smad and controlled by the texpayors that the activities of the texpayor on behalf of the corporations which he controlled were integrated and

were inter-related with his notivities on behalf of the control buying unit which he operated in his own mane, and the other fruit and regetable 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 commuted with and his business income/in furtherance thereof so as to constitute additional business income subject to unincorporated business tax.

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

## ORTHUNIN.S.

- (A) That the unlary income reported by the tempers for the years in lesue were related, connected and integrated with his business income so so to constitute additional income subject to unincorporated business taxes in accordance with the provisions of Section 186, Article 16-A of the Pag Lam.
- (8) That, accordingly, the assessment for the years 1959 and 1960 (Assessment Numbers AS 020644 and AS 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 temperature applications for revision or refund filed with respect thereto be, and the same are hereby demied.

DATED: Alberty, New York, on the 15th day of June

. 1966.

## STATE TAX CORMISSION

/s/	JOSEPH H. MURPHY	
with the same of t	Prosident	-
/s/	IRA J. PALESTIN	
	Causiasiasay	
/s/	JAMES R. MACDUFF	
	COMMUNICORON	The second secon

STATE OF NEW YORK STATE TAX COMMESSION

IN THE MATTER OF THE PETITION

MULMILLO GIVAG

POR REDETERMINATION OF A DEFICIENCY OR FOR REFURD OF UNINCORPORATED BUSINESS TAXES UNDER ARTICLE 2) OF THE TAX LAW FOR THE YEARS 1961 and 1962.

petition for a redetermination of a deficiency or for refund of unincorporated business toxes under Article 2) of the Fax Law for the years 1961 and 1962, (Pile number 2-8049795) and a bearing having been held in connection therewith at the office of the State fax Commission at 80 Contro Street, New Yerk, Next, on the 13th day of October, 1965, before Science Steet, New Yerk, Next, on the 13th day of October, 1965, before Science Steet, New Yerk, Next, on the 19th day or October, 1965, before Science Steet, New York, Next, on the 19th day or October, 1965, before Science Steet, New York, Next, on the Sampayor was represented by Lee S. Wherton, G.F.A., and the enter having been duly exemined and considered.

The State Tax Counterion hereby finder

(1) That David and Mary Coldwich filed a Joint See York

State Income Fax Secident Sature for the year 1961 to which the

taxpayer, David Goldwich, reported extery income from Sine Sibbon

Fruit and Produce, Inc. in the sum of \$6,600; from Little Three Srute

and Produce, Inc. in the sum of \$750, and from Victory Seys Pruit and

Produce Corp. in the sum of \$550; that the taxpayer, David Goldwich,

reported on Schedule A of cold return not profit from business of

retail fruit and regerables in the sum of \$5,417.67; that the taxpayer,

David Goldwich, did not file any New York State unincorporated business

tax return for the year 1961; that David and Mary Goldwich filed a

New York State Income Tax Semident Sature for the year 1962 in which

the texpaper, David Coldulate, reported salary income from Sime Albbon Fruit and Fraduce, Inc. in the sum of 17,450; from Little Three Fruit and Produce, Inc. the sum of \$100 and from Whoteep Says Fruit and Froduce Corp. the sum of \$150; that the temperary David Coldwich, filed an unincorporated business tax return for th year 1962 in which he reported not income from business in the comof \$4,345.86; that in view of the stabutory exception of \$5,000 aforementioned, the temperer did not pay any unincorporated business taxes for the year 1962; that on August ), 1964, the Department of fasation & Finance issued a statement of audit charges against the tempayer, David Goldwich, for the years 1961 and 1962, imposing additional normal tex of \$27.96 for each of the years 1961 and 1962 as a result of a field mailt, and, in addition, hold the salary income reported by the tempeyer for the years in inven to committee. edditional business impose subject to unimorporated business tax, and imposed additional uniscorporated business tax plus possitios and interest, and, accordingly, issued a solice of defletency therefor,

the temperer, David Solamich, operated a retail fruit and regulable store in his individual mane, doing business as Score Pruit Marbets.

That he was also the sole stockholder of three demantic corporations all organized under the laws of the State of New York, and become as Slue Sibson Fruit & Produce, Inc., Little Three Fruit & Produce, Inc., and Victory Soys Fruit & Produce. Corp.; that each of those corporations operated fruit and regulable stores in and around the same vicinity in the Serough of Specklym, City and State of New York, which were near, and within the vicinity of the retail fruit and regulable store operated by the temperer under his individual same, under the trade made of Goom Fruit Markets that in addition, the temperer operated under his own same, under the trade

ecatest buying unit for the purchase of fruits and vegetables, primarily, for the three corporations and the other fruit and regetable store operated in his own mane; that the taxpayer super-vised the eparation of all five units without any specific division of time; that he made all decisions concerning all units, and formulated anagerial policion; that he listed his compation on tenal of the corporations as that of supervisor; that he reported for personal income tax perposes the salary received from sold corporations; that only the profit of the sole proprieterships was: reported for unisserperated beginness tax perposes; that the laxuager salarated separate recepts for such entity.

(3) That the tempersy's activities on behalf of the there corporations in the operation of fruit and vegetable merkets use the some as that of the individual proprietorship operating a capacate fruit and vegetable market; that in addition, the operation of the central buying unit of fruits and regatables as a cole proprietorably was primarily on behalf of the three corporations and the individual proprietorship spersking a separate fruit and vagotable marks . owned and controlled by the temperors that the activities of the taxpayer on bonalf of the corporations which he controlled were integrated and were related with his solivities on bonalf of the central buying unit which he operated in his our mass and the ether fruit and regetable market which he also operated in his our humo; that the sulary income reported by the tempoyer on his income tem returns for the years in incus was integrated, inter-related, and connected with his business income and in furtherness thereof as as to constitute edditional business income subject to unincorporated buelmess tem.

Based upon the foregoing finings and all of the evidence proceeded horein the State Cas Completion hereby

## ORCIUMD.

(A) That the sulary income reported by the taxpayor for the years in issue one related, commetted and integrated with his business income so on to committee additional income subject to unincorporated business taxes in accordance with the provisions of Section 70% Article 23. of the Tex Law.

(8) That, accordingly, the notice of deficiency for the years 1962 and 1962 was properly issued; that the tax incorat, penalty and other charges stated therein are correct; that the mass do not include any tax erother charge which could not have been lawfully demanded, and that the taxpayer's potition for a redetermination of a deficiency be, and some is hereby dismissed.

DATEDS Albuny, New York, on the 23rd day of

June

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## STATE TAX COMMISSION

/s/ JOSE PH H. MUR PHY

/s/

IRA J. PALESTIN

Mary Property and Property and

Country Lotter