

Unincorp. Bus. Tax Determinations
A-Z
Hanley, John F.

Commissioners Murphy & MacDuff

Solomon Sles, Hearing Officer

John F. Hanley

**Petition for Redetermination of
Deficiency of Unincorporated
Business Tax Under Article 23 of
the Tax Law for the year 1962.**

A hearing in the above matter was held before me at 80 Centre Street, New York City on June 24, 1966. The appearances and exhibits submitted are as shown in the stenographic transcript submitted herewith.

The issue involved is whether the activities of the taxpayer, conducting an employment agency specializing in accounting and financial personnel constitute the practice of a recognized profession exempt from the imposition of unincorporated business tax in accordance with subdivision (c) Section 703 of the Tax Law.

The taxpayer graduated from Salem Commercial High School in Salem, Mass., and thereafter attended Knights of Columbus Accounting School in Boston, Mass. He was thereafter employed as a bookkeeper and manager of a country club for six years and as junior accountant with a railroad. From 1942 until 1949, taxpayer was office manager and chief accountant for Feltner Company of America in New York City.

In 1949, the taxpayer went into the employment agency business for himself, specializing in accounting and financial personnel under the name of John F. Hanley, d/b/a Hanley Accounting Personnel at 50 Church Street, New York City until 1963 at which time he formed a corporation. The income of the taxpayer for 1963 represents income from taxpayer's individual agency business which was in the process of liquidation. The services of the taxpayer consisted of the obtaining of orders from clients including their complete specifications, salary ranges, follow-ups with clients after obtaining interviews for applicants and making decisions as to whether an applicant should or should not be referred for employment to the prospective employer.

The taxpayer did all of the interviewing himself and employed clerks, stenographers and typists. Most of the fees were received from the employers.

TO: Commissioners Murphy & MacDuff

Page 2

RE: John F. Hanley

The term "profession" as used in subdivision (c), Section 703 of the Tax Law exempting income from professional services for unincorporated business tax purposes implies knowledge of an advanced type in a given field in science or learning gained by a prolonged course of specialized instruction and study. PEOPLE ex rel. ROFFERT v. BATES, 276 App. Div. 38, Aff'd 301 N.Y. 997, cert. den. 340 U.S. 865; see also PEOPLE ex rel. TOWER v. STATE TAX COMMISSION 282, N.Y. 407. In the Matter of Deland (Formal Hearing Determination - 5/29/43), it was held that a personnel counsellor of executive placement was not entitled to professional exemption but was subject to unincorporated business tax on the income derived therefrom.

I am, therefore, of the opinion that the taxpayer's activities in the conduct and management of a personnel agency do not constitute the practice of a recognized profession except from the provisions of the unincorporated business tax within the intent and meaning of subdivision (c), Section 703 of the Tax Law.

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

DEC 12 1966

(Dec. 16, 1966)

SOLOMON SIES
Hearing Officer

/s/

M. SCHAPIRO

Approved

/s/

S. HECKELMAN

Approved

DEC 13 1960

JOHN F. SCHMIDT

JOHN F. SCHMIDT

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition of

JOHN F. HANLEY

**for a Redetermination of a Deficiency or
for Refund of Unincorporated Business
Taxes under Article 23, of the Tax Law
for the Year 1963.**

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The above named taxpayer John F. Hanley having filed a petition for redetermination of a deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the year 1963 (File #3-8039937) and a hearing having been held in connection therewith at the office of the State Tax Commission at 86 Centre Street, New York, N.Y. on the 26th day of June, 1966 before Solomon Sles, Hearing Officer of the Department of Taxation and Finance, at which hearing the taxpayer appeared personally and testified and was represented by William J. Hanley, C.P.A., and the matter having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That the taxpayer John F. Hanley and Florence S. Hanley filed a New York State combined income tax return for the year 1963 in which the taxpayer John F. Hanley reported under Schedule "A" thereof, business income in the sum of \$51,145.21; that the taxpayer John F. Hanley did not file any unincorporated business tax return for said year; that on May 19, 1965 the Department of Taxation and Finance issued a statement of audit charges against the taxpayer John F. Hanley imposing unincorporated business tax upon the ground that the aforementioned taxpayer's activities in the conduct of a personnel agency constituted the carrying on of an unincorporated business and that the income derived therefrom is subject to unincorp-

erated business tax and accordingly issued a notice of deficiency therefor.

(2) That since 1949 the taxpayer John F. Hanley has been self-employed conducting an employment agency specializing in accounting and financial personnel under the name of John F. Hanley, d/b/a Hanley Accounting Personnel at 38 Church Street, New York City until 1963 at which time he formed a corporation engaged in the same activity; that the income of the taxpayer John F. Hanley for 1963 was derived from his individual agency business which was in the process of liquidation; that the services of the taxpayer consisted of the obtaining of orders from clients including their complete specifications, salary ranges, follow-ups with clients after obtaining interviews for applicants and making decisions as to whether an applicant should or should not be referred for employment to the prospective employer; that the taxpayer John F. Hanley did all of the interviewing himself and employed clerks, stenographers and typists; that most of the fees were received from the employers; that more than 80% of the gross income is derived from the personal services actually rendered by the taxpayer and in which capital is not a material income producing factor.

(3) That the taxpayer graduated from Salem Commercial High School in Salem, Mass., and thereafter attended Knights of Columbus Accounting School in Boston, Mass.; that he was thereafter employed as a bookkeeper and manager of a country club for six years and as a junior accountant with a railroad; that from 1940 until 1949, taxpayer was office manager and chief accountant for Feltors Company of America in New York City.

Based upon the foregoing findings and all of the evidence produced herein,

The State Tax Commission hereby

SUSPENDS:

That the activities of the taxpayer in conducting an employment agency did not constitute the practice of a recognized profession but constituted the carrying on of an unincorporated business subject to unincorporated business tax in accordance with subdivision (c), Section 70) of the Tax Law; that the statement of audit changes and notice of deficiency for the year 1963 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 redetermination of a deficiency be and the same is hereby denied.

DATED: Albany, New York on the 27th day of December, 1964.

STATE TAX COMMISSION

/s/

JOSEPH H. MURPHY

President

/s/

JAMES R. MACDUFF

Commissioner

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