

STATE OF NEW YORK

STATE TAX COMMISSION

IN THE MATTER OF THE APPLICATION OF

PAUL W. HARDY

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

Paul W. Hardy, having duly filed an application for revision or refund of unincorporated business taxes assessed under Article 16-A of the Tax Law for the calendar year 1957, and a hearing having been held in connection therewith on July 8, 1964 at the office of the State Tax Commission, Department of Taxation and Finance Building, Albany, New York before Martin Schapiro, Hearing Officer of the said Department, at which hearing the taxpayer was represented by his attorney, and the record having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That a personal income tax return for the calendar year 1957 was filed by the taxpayer showing compensation as an employee for General Printing Company of Fort Wayne, Indiana in the amount of \$40,974.20 and gross receipts from the taxpayer's own business, Paul W. Hardy Co. in the amount of \$5,046.65; that on his return the taxpayer deducted from his income, rent for the use of one room in the taxpayer's home for office work, miscellaneous office and other expenses and salaries paid by the taxpayer; that an assessment was issued on May 12, 1960 (Assessment No. B-780311 for the year 1957) on the ground that the taxpayer's activities constituted the carrying on of an unincorporated business.

(2) That during the year 1957, the taxpayer, an officer of the aforesaid General Printing Company, was a salesman on a commission basis, procuring orders for the printing of advertising material, posters and placards for the aforesaid principal firm and three other firms; that the commissions received from the three other principals were reported as income received in the taxpayer's business, Paul W. Hardy Co.; that the related lines of the three latter firms were sold to customers who sought material not printed by the General Printing Company; that General Printing Company deducted Federal withholding and social security taxes from the taxpayer's commissions; that neither General Printing Company or the other firms were concerned with the hours of the taxpayer's employment, but solely with the amount of sales procured by the taxpayer.

(3) That during the year involved, the taxpayer maintained an office in his own name in connection with his sales activities for all of the principals and paid the rent therefor; that in addition thereto, the taxpayer used a portion of his home for office work; that the taxpayer employed a secretary and paid her salary; that neither the rent, the secretary's salary nor any other expenses which exceeded \$7,500 were paid by any of the principals except to the extent that the taxpayer received \$2,500 as a flat amount from General Printing Company to help partially defray expenses.

(4) That during 1957, the taxpayer hired an assistant to help sell the products of General Printing Company; that the taxpayer and the General Printing Company each paid one-half of the assistant's salary.

Based upon the foregoing findings and all of the evidence

presented herein, the State Tax Commission hereby

DETERMINES:

(A) That the income of the taxpayer was not compensation for services rendered by him as an officer or an employee of any of the taxpayer's principals, but was derived from his own unincorporated business activities.

(B) That, accordingly, the additional taxes assessed against the taxpayer for the year 1957 under Article 16-A of the Tax Law are correct and are due and owing, together with lawful interest and other lawful charges.

DATED: Albany, New York, on the 26th day of April , 1965.

STATE TAX COMMISSION

/s/

JOSEPH H. MURPHY

President

/s/

IRA J. PALESTIN

Commissioner

/s/

JAMES R. MACDUFF

Commissioner

BUREAU OF LAW

MEMORANDUM

TO: Commissioners Murphy, Palestin and Macduff

FROM: Martin Schapiro, Hearing Officer

SUBJECT: Paul W. Hardy application for revision
or refund of Unincorporated Business Taxes
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 July 8, 1964. The appearances and the evidence produced were as shown in the stenographic minutes and exhibits submitted herewith.

The issue raised herein is whether or not the taxpayer's activities as a salesman for his principal firm during the years involved constitute the carrying on of an unincorporated business. The facts disclose that the taxpayer filed a return of income for the year 1957 reporting income earned from his own business in the amount of \$5,046.65 from a business office other than the taxpayer's home and conducted it under the trade name of Paul W. Hardy Co. On such return the taxpayer reported as compensation as an employee in the amount of \$40,974.20 from the General Printing Company of Fort Wayne, Indiana. No unincorporated business tax returns were filed. Assessments were issued assessing unincorporated business taxes on the combined income from the General Printing Company and that of the taxpayer's own business.

General Printing Company deducted social security payments and Federal withholding taxes from the taxpayer who was a vice-president, but not a stockholder of the company. The three other principals for whom the taxpayer was engaged did not make such deductions. All the principals were in the printing line and sales were made by the taxpayer of the products of the three other principals where the taxpayer's customers sought material which could not be provided by General Printing Company. The taxpayer's business operations for all of his principals were conducted both from the taxpayer's home and from the office for which he held the lease and paid the rent. In addition to the rent, the taxpayer incurred various office and other expenses, including salaries for a secretary hired by the taxpayer, which expenses were not specifically reimbursed by the principals, except that a flat amount of \$2,500 was given to the taxpayer as a partial compensation for expenses regardless of the amount of actual expenses. In addition thereto, the taxpayer hired an assistant on the General Printing Company's sales, half of

whose salary was paid by the General Printing Company and half by the taxpayer. The office of General Printing Company was located in Indiana, and the company was concerned with results and not concerned with the hours spent. I am of the opinion that the income of the taxpayer was not compensation for services rendered by him either as an employee or as an officer of the principal's company, but was derived from his own unincorporated business activities. The taxpayer maintained an office, hired clerical help and assistance and was not subject to any strict supervision by any of the principals and was not, with the exception of the amount of \$2,500 and 1/2 of the assistant's salary, reimbursed by his principal for expenses.

I have, therefore, prepared a proposed determination sustaining the assessment on such grounds.

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

Hearing Officer

MS:ca

Enc.

April 14, 1965

Approved

Approved