

## BUREAU OF LAW

## MEMORANDUM

TO: Commissioners Murphy, Palestin & Macduff

FROM: Solomon Sies, Hearing Officer

SUBJECT: LEON KATZ

1954 Assessment No. B-648882  
1955 Assessment No. B-648883  
1956 Assessment No. B-648884

**Article 16-A**

A hearing with reference to the above matter was held before me at 80 Centre Street, New York, N.Y. on May 29, 1964. The appearances and the evidence produced were as shown in the stenographic minutes and the exhibits submitted herewith.

The issue involved herein is whether certain income received by the taxpayer from Research Construction Corporation during the years in question and reported as salary income constituted receipts derived from an unincorporated business in accordance with Section 386, Article 16-A of the Tax Law.

During the years 1954, 1955 and 1956 and prior thereto the taxpayer was engaged in business as a real estate broker at 125 East 170th Street, Bronx, N.Y. The taxpayer filed unincorporated business tax returns for the aforementioned years. His net income, however, during the said years was less than \$5,000.00 so that he was not required to pay unincorporated business tax on said income.

The taxpayer testified that Research Construction Corporation was a corporation organized under the laws of New Jersey and engaged in the construction of one-family houses in Teaneck, New Jersey. The taxpayer owned 30% of the shares of stock in this corporation and was vice-president. He testified that he spent half (1/2) days checking the work as it progressed five days a week and full days Saturdays and Sundays supervising and checking the work as it progressed and also supervised the selling of the houses on weekends; that he was paid a salary of \$150.00 per week (Minutes of Hearing, pp. 15 and 16). The aforementioned corporation withheld Federal income and social security taxes from the compensation paid to the taxpayer. The taxpayer further testified that the statement on his return that he was a real estate broker for this corporation was an error (Minutes of Hearing, 10/16/64, page 17).

I am of the opinion that the income received by the taxpayer from Research Construction Corporation constituted salary income; that the taxpayer was in fact an employee of said firm and not an independent contractor carrying on or engaged in an unincorporated business in accordance with Section 386, Article 16-A of the Tax Law.

TO: Commissioners Murphy, Palestin & Macduff

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RE: LEON KATZ

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

APR 26 1965

SOLOMON SIES

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Hearing Officer

/s/

MARTIN SCHAPIRO

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Approved

/s/

E. H. BEST

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Approved

STATE OF NEW YORK  
STATE TAX COMMISSION

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IN THE MATTER OF THE APPLICATION

OF

LEON KATZ

FOR REVISION OR REFUND OF UNINCORPORATED  
BUSINESS TAXES UNDER ARTICLE 16-A OF THE  
TAX LAW FOR THE YEARS 1954, 1955 & 1956.  
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Leon Katz, the taxpayer herein, having filed applications for revision or refund of unincorporated business taxes under Article 16-A of the Tax Law for the years 1954, 1955 and 1956, and a hearing having been held in connection therewith at the office of the State Tax Commission, 80 Centre Street, New York, N.Y. on the 29th day of May, 1964, before Solomon Sies, Hearing Officer of the Department of Taxation and Finance, at which hearing the taxpayer appeared personally and was represented by the accounting firm of Joseph S. Herbert & Co., CPA, Empire State Building, New York, N.Y., testimony having been taken and the record having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That the taxpayer filed personal income tax returns for the years 1954, 1955 and 1956, in which he reported compensation received from Research Construction Corporation as real estate broker in the sums of \$4,350.00, \$7,800.00 and \$7,800.00, respectively; that for 1954, the taxpayer reported on Schedule A that he was engaged in business as a real estate broker maintaining an office at 125 East 170th Street, Bronx, N.Y. and that his gross income from said business amounted to \$12,301.27; that the taxpayer filed an unincorporated business tax return for said year setting forth net income in the sum of \$3,400.86 but paid no unincorporated business tax since the exemption of \$5,000.00 exceeded the net income; that for 1955 the taxpayer reported on Schedule A gross income from business as real estate broker in the

sum of \$5,027.94; that for 1956, the taxpayer reported on Schedule A net income from business as real estate broker in the sum of \$4,934.32; that on August 18, 1959, the Department of Taxation and Finance made additional assessments against the taxpayer for the years 1954, 1955 and 1956 (Assessment Nos. E-648882, E-648883, E-648884, respectively) holding that the income received by the taxpayer from Research Construction Corporation for each of the years 1954, 1955 and 1956 was subject to unincorporated business tax in accordance with Article 16-A of the Tax Law.

(2) That during the years 1954, 1955 and 1956, the taxpayer was employed by Research Construction Corporation, a corporation organized under the laws of New Jersey, to supervise the construction of a group of one-family houses in Teaneck, New Jersey; that the taxpayer worked a half (½) day five days a week and full days on Saturday and Sunday; that the taxpayer received a weekly salary of \$150.00 from said corporation; that the aforementioned corporation withheld Federal income and social security taxes from the compensation paid to the taxpayer.

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

**DETERMINES:**

(A) That the income reported by the taxpayer in Item 10 of his personal income tax returns for the years 1954, 1955 and 1956 was salary income earned by the taxpayer as an employee and did not constitute receipts from an unincorporated business.

(B) That, accordingly, the additional unincorporated business taxes assessed under Article 16-A of the Tax Law for the years 1954, 1955 and 1956 (Assessment Nos. E-648882, E-648883, E-648884, in the sums of \$102.31, \$92.46 and \$225.37, respectively) were not due and were not lawfully demanded and that the aforementioned assessments be and the same are hereby cancelled in full.

AND IT IS SO ORDERED.

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

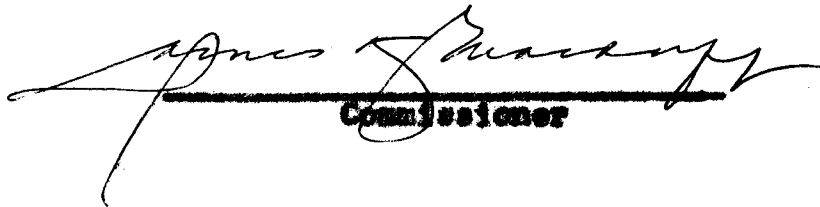
STATE TAX COMMISSION

/s/

JOSEPH H. MURPHY

Commissioner

Commissioner

  
Commissioner