

BUREAU OF LAW

MEMORANDUM

Unincorp. Bus. Tax Determinations A-Z
Lichtman, Harris

TO: Commissioners Murphy and Macduff

FROM: Francis V. Dow

SUBJECT: Harris Lichtman, application for revision or refund of unincorporated business taxes under Article 16-A of the Tax Law for the year 1959

A hearing with reference to the above matter was held before me at 80 Centre Street, New York, New York on October 4, 1966. The appearances and the evidence produced were as shown in the stenographic minutes and exhibits submitted herewith.

The taxpayer filed an application for refund of unincorporated business taxes for the year 1959 on April 22, 1965 which was more than two years from the date that he filed his return. In it he stated that the basis for claiming a refund was that he erroneously included \$8,856 which he received in interest on personal bank accounts on income received in his business. The taxpayer contended that he was entitled to a refund under section 373(3) of the Tax Law because no questions of fact or law are involved.

On March 23, 1961 the taxpayer was assessed additional taxes in the amount of \$100 for the year 1959 (Assessment No. B-844961) based on the disallowance of the special deduction in the amount of \$1,000 since he claimed specific deductions in connection with business income. The assessment was paid on June 19, 1961.

On May 24, 1963 the taxpayer filed a prior application for refund of unincorporated business tax for the year 1959 alleging that he failed to take credit for \$832 which he paid on his estimated tax for that year. Refund was made to him under section 373(3) of the Tax Law for the amount claimed since there was no question of law or fact involved and the records of the Income Tax Bureau indicated that \$832 was erroneously collected.

The taxpayer is engaged in the finance business. He borrowed money from lending institutions which he loaned to others. The money which the taxpayer borrowed was repaid from his savings accounts and from repayments of the loans which he had made. Some of these repayments were also deposited in the

savings accounts on which he earned the interest that the taxpayer claims to have erroneously added to his gross income in his unincorporated business tax return.

A refund of unincorporated business tax was granted the taxpayer for the year 1960 by the Income Tax Bureau as the result of the exclusion of savings bank interest in the amount of \$11,870 from his business income. It could not be ascertained why the Income Tax Bureau excluded this interest for the year 1960.

I am of the opinion that the exclusion of savings bank interest from the taxpayer's business income presents questions of law and fact to be resolved by the Commission, and the mere fact that such question was resolved in favor of the taxpayer in the year 1960, when a timely application was made, does not mean that such questions were eliminated for the year 1959.

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

/s/

FRANCIS V. DOW

Hearing Officer

December 5, 1966

FVD:rlp

End.

/s/

MARTIN SCHAPIRO

Approved

/s/

SAUL HECKELMAN

Approved

STATE OF NEW YORK
STATE TAX COMMISSION

IN THE MATTER OF THE APPLICATION

OF

HARRIS LIGHTMAN

**FOR REVISION OR REFUND OF UNINCORPORATED
BUSINESS TAXES UNDER ARTICLE 16-A OF THE
TAX LAW FOR THE YEAR 1959**

The taxpayer having duly filed an application for refund of unincorporated business taxes under Article 16-A of the Tax Law for the year 1959 and a hearing having been held in connection therewith at the office of the State Tax Commission, 60 Centre Street, New York, N.Y. on October 4, 1966 before Francis V. Dow, Hearing Officer of the Department of Taxation and Finance at which hearing the taxpayer appeared and testified, and the record having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That the taxpayer filed an unincorporated business tax return for the year 1959 and for the year 1960; that unincorporated business taxes were computed by the taxpayer and payment of taxes as computed was made together with the filing of the return; that the return for 1959 bears a notation that the taxpayer's business is financing; that his return lists gross receipts in his business in the sum of \$25,638.46 from which he had deducted interest and business indebtedness of \$163.

(2) That on April 22, 1965 the taxpayer filed an application for refund of the taxes paid for the year 1959; that the application for refund of taxes for the year in question was based on the

allegation that the taxpayer erroneously included in business income \$8,836 in interest earned on personal bank accounts and that such income was not subject to unincorporated business taxes; that a refund was granted for the year 1960 after savings bank interest in the amount of \$11,670 was excluded from business income; that a refund for the year in question was denied on the ground that the taxpayer's application for refund was not timely filed.

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

DETERMINED:

(A) That since the application for refund of unincorporated business taxes for the year 1959 was filed more than two years from the filing of the return, it was not timely filed in accordance with the requirements of section 374 of the Tax Law.

(B) That questions of fact and law are involved, namely whether the money in the savings account of the taxpayer was capital used in the taxpayer's business, and the taxpayer is therefore not entitled to relief under the provisions of section 373(3) of the Tax Law.

(C) That, accordingly, the taxpayer's application for refund of unincorporated business taxes paid for the year 1959 is hereby denied.

DATED: Albany, New York on this 27th day of December, 1960.

STATE TAX COMMISSION

/s/

JOSEPH H. MURPHY

PRESIDENT

/s/

JAMES R. MACDUFF

COMMISSIONER