

Healing

From Commissioner Murphy

STATE OF NEW YORK
STATE TAX COMMISSION

IN THE MATTER OF THE APPLICATION

OF

CHARLES E. SLAUGHTER

FOR REVISION OR REFUND OF UNINCORPORATED
BUSINESS TAXES UNDER ARTICLE 24-A OF THE
TAX LAW FOR THE YEAR 1956.

The taxpayer having filed an application for revision or refund of unincorporated business taxes under Article 24-A of the Tax Law for the year 1956 and a hearing having been held in connection therewith at the office of the State Tax Commission at 60 Centre Street, New York City, N. Y. on December 13, 1956 before Solomon Stein, Hearing Officer of the Department of Taxation and Finance and the taxpayer having been represented by Herbert Willner, C.P.A. and William Friedman, Esq. of 34 Water Drive, Jericho, L.I., New York, and the matter having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That for several years prior to and during the year 1956 the taxpayer was employed by Lancaster Chemical Corp. of Carlstadt, N. J. as an executive supervising the manufacture of a chemical material called "Kling", which was mixed with asphalt to produce asphalt paving; that the taxpayer's earnings from said employment during the year 1956 amounted to \$16,381.34; that said employment was not in any way connected or related to the other activities of the taxpayer as investment counselor and as representative of certain stockholders hereinafter more fully described.

(2) That the taxpayer on his 1956 New York State

income tax return on Schedule A thereof stated that he was engaged in the business of "Investment & Business Counsel since 1937" in his own name at 40 Fifth Avenue, New York City, N.Y. (his residence) and that his total receipts in connection therewith amounted to \$100,879.04; that the business expenses listed by the taxpayer consisted of salaries \$1,426.00, rent \$600.00, company tax \$1.00, depreciation \$6.79, other business expenses \$6,477.34, total expenses \$8,511.19, resulting in a net income from business in the sum of \$92,367.85; that the income from the sale of stock amounted to \$98,722.80; that the income from investment counselling services was \$2,157.04.

(3) That for several years prior to and during the year 1954, in addition to the activities described in Finding (1) above, the taxpayer was self-employed and engaged in business as "investment and business counsel" at 40 Fifth Avenue, N.Y.C., his place of residence or at 9 Rockefeller Place, N.Y.C., according to the New York State income tax returns filed by him; that the activities of the taxpayer as investment counsel consisted of advising a select number of persons with regard to the purchase and sale of securities held by them; that the aforesaid persons executed Powers of Attorney authorizing the taxpayer to buy and sell securities on their behalf; that the net income of the taxpayer from said business prior to 1954 amounted to less than \$5,000.00 per annum.

(4) That in or about March, 1952, the taxpayer was approached by four individuals unrelated and in addition to the persons mentioned in Finding (2) above, who requested him to represent them in connection with the sale of certain shares of stock owned by them in a corporation engaged in the manufacture of printing machines known as Dexter Faldor Co.; that fifty percent (50%) of the shares of stock of this

corporation were owned or controlled by another machinery manufacturing corporation located in Chicago, Ill. which had offered the individual stockholders \$17.50 per share for the shares of stock owned by them in the Dexter Corporation; that the individuals rejected said offer and agreed to engage the services of the taxpayer, who had previously owned and sold a similar business.

(5) That accordingly, each of the individuals mentioned above did on March 24, 1952 enter into a written agreement with the taxpayer; that all of the agreements contained the same provisions; that each of the agreements provided as follows:

Dear Mr. Slaughter:

If you negotiate a sale of my stock and/or voting trust certificates therefor in Dexter Folder Company at a price and on terms satisfactory to me and the sale is actually consummated, I will pay you a commission of five percent (5%) of what I receive for the stock when and as received.

This five percent payment is in addition to any sums that may be due you under your contract with me as investment counselor.

This arrangement is limited to sales and exchanges which do not constitute a reorganization or recapitalization of Dexter Folder Company; it does not apply to any exchange of such stock and/or voting trust certificates incident to any recapitalization or reorganization of Dexter Folder Company.

If you make an arrangement similar to this with any other holder or holders of such stock or voting trust certificates, and if a sale or exchange is effected as a result of your efforts which involves less than all such stock or voting trust certificates represented by you thereunder, then all of the holders of shares or Voting Trust Certificates that you represent shall be given the opportunity, if they so desire, of participating in such sale in proportion to the total number of shares or voting trust certificates then held by them, and the aggregate commission on such sale or exchange shall be proportioned in like manner.

This arrangement may be terminated by either of us on six months prior written notice of intention to terminate and shall be terminated automatically by the death of either of us or in the event of your incapacity. Termination shall not impair any rights accrued prior

thereto.

If this arrangement is satisfactory to you, kindly so indicate by signing and returning the enclosed copy of this letter, which will then constitute a contract between us.

Very truly yours,

Accepted March 19, 1938

s/ Sam. C. Blackledge

s/ Charles H. Blanchard
Charles H. Blanchard

(6) That pursuant to the arrangements and agreements referred to in Findings (4) and (5) above, the taxpayer attended meetings of the Board of Directors of Dexter Felter Co., furnished investment counselling advice to the individuals mentioned for which he received annual fees of \$3.75 per share which were reported as business income on his income tax returns prior to 1936; that said fees were in addition to other fees which the taxpayer received as investment counsel from the other individuals described in Finding (2) above; that the taxpayer endeavored to negotiate for the sale of the stock of the individuals whom he represented by contacting investment bankers and others; that the taxpayer's activities as investment counsellor in Finding (2) were related to and connected with his activities as investment counsellor as set forth in the agreement in Findings (4) and (5) above.

(7) That in 1936 the taxpayer was successful in securing an investment firm in Boston, Mass. to submit an offer to purchase the shares of stock in Dexter Felter Co. for \$35.00 per share; that the corporation which owned the 90% interest in Dexter Felter Co. was notified of the proposed offer and submitted a counter offer of \$32.50 per share which was accepted by the individual stockholders of Dexter Felter Co.; that the sale of the individual stock of the four persons was consummated in 1936; that as a result thereof, the taxpayer received his commissions from the individuals with whom he had written contracts and also commissions for the sale of the stock of another individual

stockholder of Dexter Felter Co. with whom the taxpayer did not have a written agreement.

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

DETERMINES:

(A) That the taxpayer's activities on behalf of certain stockholders of Dexter Felter Company and the commissions received from them as a result thereof was so connected, inter-related and integrated with his independent business of investment and business counsellor as to constitute receipts of such business subject to unincorporated business tax in accordance with Section 186, Article 16-A of the Tax Law.

(B) That, accordingly, the assessment (Assessment No. B-677792) for the year 1956 is correct; that it does not include any tax or other charge which could not have been lawfully demanded and that the taxpayer's application for revision or refund with respect to said assessment be and the same is hereby denied.

DATED: Albany, New York on the 20th day of MAY , 1956 .

STATE TAX COMMISSION

/s/

JOSEPH H. MURPHY

Commissioner

/s/

IRA J. PALESTIN

Commissioner

/s/

JAMES R. MACDUFF

Commissioner

*Unsub. p. Bus. Dev.
Information A-Z
Slaughter, Charles B.*

Deputy Commissioner E. H. Best

RE: CHARLES B. SLAUGHTER (UBT 1956)

This file is returned to you for processing in compliance with the request in Mr. Kelliher's memo dated 8/7/64. Please note Commissioner Murphy's comment on the buckslip addressed to me under date of 1/22/65.

1/25/65

To Commissioner Murphy
San Francisco

I have signed the
1/22/65 subject to obtaining
the letter working at 2.

From Commissioner Faloutin

CHARLES B. SLAUGHTER - UBT 1956 - FORMAL HEARING

The manner of conducting this formal hearing is improper. Taxpayer, not in attendance at the hearing, had two representatives present, his attorney and his accountant. The minutes show a "Q" and "A" colloquy between the hearing officer and these representatives for all but three pages of the 21-page record. The colloquy is mainly argument. Facts are included which obviously are not within the knowledge of the speakers. There were no witnesses apart from these conferees. No one was sworn. There were two hearing sessions. Despite some reference during the adjourned session to "previous testimony" in which the hearing officer asked about a "Mr. Gilbert," there is no testimony.

The statute provides that the Tax Commission shall take testimony and proofs under oath. Tax Law, Sec. 171-Eighth. At the hearing, evidence is to be submitted. Tax Law, Sec. 374. See Sec. 386-j.

Article 78 in CPLR provides:

Sec. 7803(4) The only questions that may be raised in an article 78 proceeding are ". . . whether a determination made as a result of a hearing held, and at which evidence was taken, pursuant to direction by law, is on the entire record, supported by substantial evidence."
(Sec. 7803 identifies other questions besides the one here quoted.)

Sec. 7804(g) CPLR states that where the issue specified in Sec. 7803(4) is raised in an article 78 proceeding (returnable in Special Term of the Supreme Court) the court shall make an order transferring the matter to a term of the Appellate Division held within the Judicial Department embracing the county in which the article 78 proceeding was commenced; the Appellate Division will then determine the evidence issue raised by the article 78 proceeding. These sections of CPLR derive from sec. 1296 of the Civil Practice Act.

The undersigned agrees with the conclusion reached by the hearing officer and Law Bureau that the instant taxpayer's activity, for which he was compensated by a finder's fee, was ap

~~related to his investment counseling service as to be included within the base for his unincorporated business tax. The point of this memorandum however is to show misapprehension of the conduct of a statutory hearing to test an administrative act. It could have been stipulated on the record that the taxpayer, more than 80 years old, was unable conveniently to attend the hearing; that the statements made by his representatives who lacked first-hand knowledge constituted taxpayer's stipulation of facts (a power of attorney executed in favor of these two representatives appears in the file); or an affidavit could have been offered by taxpayer to the effect that what his representatives stated on the record would have been testified to by taxpayer had he been personally present at the hearing.~~

The hearing officer has stated on my telephoning him that it was somewhere indicated that taxpayer could not come to the hearing because of his age; the hearing officer agrees that a better procedure would be to have the facts stipulated on the minutes.

~~I recommend that a letter or affidavit be procured from taxpayer to the effect that the statements made by his representatives at the formal hearing as disclosed by the minutes would be testified to by him in substance had he been present at the hearing. Mr. Best agreed that this can be done, when I recently spoke to him in the matter. For this purpose the minutes should be made available to taxpayer or his representatives without charge.~~

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Generally, I would like closer precautionary scrutiny at the supervisory level of the conduct and reporting of formal hearings; alternatively, a boning-up on administrative hearings and evidence. Reference is made to my written comments on "The Hearing Minutes" dated December 4, 1964 in the John Ciampi U.B.T. formal hearing matter. In my opinion the remedy is temporary that hearings imperfect on substantive or formal grounds can suffice if assurance is procured from the taxpayer that he will not take our determination up to the Appellate Division. A looseness in hearing technique will some day overtake the Commission in the Appellate Division.

Under no circumstances should we suspend efforts to correct and improve practices that bring into question the adequacy or

CHARLES B. SLAUGHTER

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sufficiency of formal hearings on which the Tax Commission is expected to issue its determinations.



IRA J. PALESTIN
State Tax Commissioner

January 21, 1965

This memorandum or cc for:
Commissioner Murphy
Commissioner Macduff
Mr. Best
Mr. Kelliher

BUREAU OF LAW

MEMORANDUM

TO: Commissioners Murphy, Palestin and Macduff
FROM: Mr. Kelliher
SUBJECT: CHARLES B. SLAUGHTER

Article 16-A of the Tax Law
for the year 1956

Herewith is the entire file on this matter together with the proposed determination sustaining the assessments on the ground that certain "finder's fees," alleged by the taxpayer to be isolated transactions, were derived from the taxpayer's unincorporated business activities of investment counselling.

The facts herein are more specifically set forth in Counsel's memorandum to Deputy Commissioner Igoe dated June 30, 1964 and hereto attached.

If you agree with the proposed determination, kindly sign the same and return the file to this Bureau for further processing.

Assistant Director

MS:ca
Enclosure

August 7, 1964