

*Unincorp. Bus. Tax Determinations*  
**BUREAU OF LAW**  
**MEMORANDUM** *Carroll, Joe A-2*

TO: State Tax Commission

FROM: Solomon Sies, Hearing Officer

SUBJECT: Petitions for Redetermination of Deficiencies of  
Unincorporated Business Taxes Under Article 23  
of the Tax Law in the Matters of:

- (1) Joe Carroll  
For the years 1960, 1961 and 1962
- (2) William Bresler & Abraham Wexler d/b/a  
*x-ref* Tri-County Plumbing & Heating Contractors  
For the year 1962
- (3) Allan Gittleson  
For the year 1960 *x-ref*

Separate formal hearings were held by me in the above matters in the New York City Office. In view of the fact that common questions of fact and law are involved in each of the above hearings, this memorandum is being submitted to cover all of the above-mentioned cases.

The common issue involved herein is whether the income of the taxpayers, reported as employees or as officers and directors of a corporation, was so integrated with their business income as to constitute additional business income subject to unincorporated business tax in accordance with the provisions of Section 703 (b) of the Tax Law.

JOE CARROLL

During the years in issue, the taxpayer, Joe Carroll, operated a book store at 1169 Sixth Avenue, New York City under his individual name. Bee See, Inc. is a domestic corporation organized under the laws of the State of New York in 1959 and operated a book store at 117 West 42nd Street, New York City. The taxpayer, and one Charles Piccarelli, were each 50% shareholders of the capital stock in said corporation and the sole officers and directors thereof. Carpel Book Shop, Inc. is a domestic corporation organized under the laws of the State of New York in 1953. The taxpayer owned 50% of the shares of the capital stock in said corporation and one Philip Pelligrino owned the other 50%. Originally, Carpel Book Shop, Inc. had a lease of the entire premises at 259 West 42nd Street, New York City. This corporation entered into an agreement whereby it subleased part of the store to a Mr. Cohen and the corporation retained a small section of the store for the sale of magazines and photographs. In the middle of 1961, Carpel Book Shop, Inc. surrendered to the sublessee the space it formerly occupied and ceased its operations in the sale of

magazines and photographs. Thereafter, it was engaged exclusively in the collection of rent of the entire premises from the sublessee. The employees in the taxpayer's individually owned book store were separate and apart from those in the stores owned by Carpel Book Shop, Inc. and Bee See Book Shop, Inc. The taxpayer ordered merchandise for his individual proprietorship which was different from that stocked by the other two stores. The merchandise for Bee See Shop, Inc. was ordered by Charles Piccarelli. There was no exchange of merchandise from one store to the other. Each entity had its own employees, maintained separate books and records and was operated independently.

#### TRI-COUNTY PLUMBING & HEATING CONTRACTORS

William Bresler and Abraham Wexler formed a partnership under the name of Tri-County Plumbing & Heating Contractors in July, 1953, and conducted business at 119-18 94th Avenue, Richmond Hill, Queens, N.Y., engaged solely in the business of plumbing and heating repairs. They share equally in the profits and losses of the co-partnership. Tri-County Plumbing & Heating, Inc. is a domestic corporation organized under the laws of the State of New York in July, 1953 and maintains its principal place of business at the same address as the co-partnership. Bresler owns 51% and Wexler owns 49% of the shares of the capital stock in the corporation which is engaged solely in the business of plumbing and heating installation in new construction. Only Bresler is a licensed plumber, and he does all of the contract negotiating and planning of plumbing and heating installations in all new construction and is in charge of the men actually performing such installations. Bresler is president and Wexler is treasurer of the corporation. The building at 94th Avenue is owned by 119-48 94th Avenue Realty Corp., the stock of which is owned solely by Bresler and Wexler. A separate lease for the premises is made out to both corporation and the partnership. The partnership pays a rental of \$400 a month. The bookkeeper's salary is paid by the corporation although she also performs some bookkeeping services for the partnership. Each entity maintains its own books and records, its own trucks, separate employees and payroll records. On its franchise tax report for the calendar year 1962, the corporation listed salaries paid to its officers, William Bresler, \$28,200, and Abraham Wexler, \$25,600, and it paid a franchise tax in the sum of \$1,346.20.

#### ALLAN GITTLESON

During the year 1960 the taxpayer was engaged in business as a sole proprietor under the name of Allan Manufacturing Company at 325 Duffy Avenue, Hicksville, New York. The business of Allan Manufacturing Company was that of a sales agency selling only fishing tackle hardware. It maintained no inventory. It merely purchased what it sold to meet its sales requirements through independent

sales representatives or agents. During the year 1960 the taxpayer was president of T. O. D. Manufacturing Co., Inc., a domestic corporation organized under the laws of the State of New York some time in 1945. The corporation maintained its principal place of business at the same address as Allan Manufacturing Company. The other officers and stockholders were: Arnold Klein, Christ Chion, Nickie Chion and Frank Chion. During the year 1960, this corporation was primarily engaged in the manufacture of defense parts consisting of push rod covers for reciprocal engines; and, in addition, was engaged in the manufacture of fishing tackle hardware. Although Frank Chion was the sales manager for Allan Manufacturing Company, he did not receive any salary or any share in the profits of said business. All of the fishing tackle manufactured by T. O. D. was sold to the individual proprietorship. The business of the corporation in connection with its manufacture of fishing tackle hardware for Allan Manufacturing Company represented approximately two or three percent of its manufacturing business. However, Allan Manufacturing Company purchased approximately 97% of fishing tackle hardware from other manufacturers. It appears that Allan Manufacturing Company during the year in issue did \$1,273,000 worth of business, of which only \$80,000 was purchased from T. O. D. Manufacturing Co., Inc. Allan Gittleson owned 62% of the shares of stock in T. O. D. Manufacturing Co., Inc. He received a salary from the corporation in the amount of \$18,000. The corporation and the individual proprietorship maintained separate books of account. It is to be noted that the Tax Commission issued a determination on June 1, 1960, with respect to the years 1948 through 1954, holding the salary income of the taxpayer from T. O. D. to constitute additional business receipts and, therefore, subject to unincorporated business tax. A copy of said determination is attached. However, the factual situation, as set forth above, is quite different from that in prior years. In prior years, T. O. D. was engaged almost exclusively in the manufacture of fishing tackle hardware. In prior years, the taxpayer was the exclusive distributor of the products manufactured by T. O. D., and the sales of such products amounted to approximately 99% of its total sales in each year.

In each of the above cases, the corporations deducted withholding and social security taxes from the compensation paid the taxpayers. In the case of Joe Carroll, the taxpayer's sole proprietorship stocked certain books and magazines which the other two corporations did not handle. There was no integration of sales or purchases. The taxpayer merely performed some services for the other two corporations as an officer and director thereof. In the case of Tri-County Plumbing & Heating Contractors, the partnership was engaged in plumbing and heating repairs whereas the corporation was engaged in plumbing and heating installations in new construction. The operations of the partnership were independent of the operations of the corporation. In the case of Allan Gittleson, the individual proprietorship was not depending solely upon the corporation for the sale of the fishing tackle hardware manufactured by said corporation since it only represented a small fraction thereof.

In formal hearing determination in the Matter of Nattian Nad (d. 6/12/67), the taxpayer was engaged in the business of manufacturing Persian lamb coats. He was also a 50% shareholder of Furs by Dana, Inc. which manufactures ladies' mink garments and received income therefrom which he reported as salary. It was held that the salary income was not integrated with the business income and did not constitute additional business income subject to unincorporated business tax.

In formal hearing determination in the Matter of Frank Jonas (d. 4/6/67), the taxpayer was engaged in the business of buying and selling on his own account, and importing and exporting chemicals. In addition, the taxpayer was the sole shareholder of Jonatex Corporation, whose business was the negotiation and administration of licensing arrangements under patents between foreign and American chemical companies. It was held that the income received by the taxpayer from the corporation, as an officer and employee thereof, was not integrated with his business income so as to be subject to unincorporated business tax.

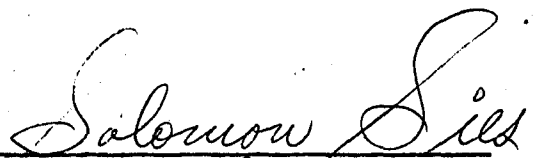
Copies of the memoranda and determinations in the above matters are attached hereto.

I am, therefore, of the opinion that the salary income of each of the above taxpayers was not integrated with their business income; that said income of each of the above taxpayers constituted compensation as an officer and director of a corporation, exempt from the imposition of unincorporated business tax; that the notices of deficiency in each of the above cases should be cancelled.

For the reasons stated above, I recommend that the decisions of the Tax Commission in each of the above matters be substantially in the form submitted herewith.

SEP 7 - 1967

2-9-68

  
Hearing Officer

## BUREAU OF LAW

## MEMORANDUM

TO: Commissioners Murphy, Macduff and Conlon  
FROM: Vincent P. Molineaux, Hearing Officer  
SUBJECT: Frank E. Jonas

Application for revision of unincorporated business tax under Article 16-A of the Tax Law for the year 1959

Petition for redetermination of a deficiency of unincorporated business tax under Article 23 of the Tax Law for the year 1961

A hearing on the above matters was held before me at 80 Centre Street, New York, New York on September 26, 1966.

The question involved herein is whether income reported by petitioner in his personal income tax return is also subject to unincorporated business tax and should have been included in his unincorporated business tax return.

The taxpayer is an importer and exporter of chemicals, buying and selling the chemicals on his own account and depending for his income on the mark-up between his purchase price and his selling price.

Around 1946, working with a representative of the French chemical industry, the taxpayer formed the Jonatex Corporation which was to promote the business of Theraplix, a French firm in the chemical industry. Theraplix was offered 75% of the shares of Jonatex Corporation but never exercised its option. The original plan was to have Jonatex receive 25% of the consideration for a licensing agreement under which Theraplix was to produce chemicals for which American Cyanamid held the patents. However, French law limited the amount which could be paid under such a licensing arrangement, and it was decided that Cyanamid would provide the chemicals to be marketed in France by Theraplix. Jonatex Corporation did not buy or sell the chemicals but acted as a vehicle and received a specified income based upon quantity transferred in lieu of royalties. This was the only transaction handled in this way. Jonatex also administers other licensing arrangements under which they receive a percentage of the royalties paid for the license.

Since the Jonatex Corporation and the taxpayer's unincorporated business, while both in the chemical industry and both located at the same address, are quite divergent it is my opinion that the activities of the corporation and of the taxpayer's unincorporated business are not so inter-related that earnings from the corporation could be deemed to constitute receipts from the taxpayer's unincorporated business.

For the reasons stated above, I recommend that the decision and determination of the Tax Commission canceling the assessment in the above matters on the ground that such receipts from the corporation do not constitute unincorporated business income, be substantially in the form submitted herewith. If you agree kindly sign one original and three copies of the determination and return the same together with the entire file to the Law Bureau for further processing.



Hearing Officer

VPM:rlp/bdg

Enc.

March 14, 1967

STATE OF NEW YORK  
STATE TAX COMMISSION

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IN THE MATTER OF THE APPLICATION  
OF  
FRANK E. JONAS  
FOR REVISION OR REFUND OF UNINCORPORATED BUSINESS TAX UNDER ARTICLE 16-A  
OF THE TAX LAW FOR THE YEAR 1959

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The taxpayer Frank E. Jonas having filed an application for revision or refund of unincorporated business tax for the year 1959 and a hearing having been held at the office of the State Tax Commission at 80 Centre Street, New York, New York on the 26th day of September, 1966 before Vincent P. Molineaux, Hearing Officer of the Department of Taxation and Finance and the record having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That the taxpayer filed a New York State unincorporated business tax return for the year 1959 in which he reported taxable income in the sum of \$21,667.11.

(2) That on May 26, 1961 the State Tax Commission issued an assessment for the year 1959 which was based upon income received from Jonatex Corporation, reported as personal income, considered part of the business income and subject to unincorporated business tax under the provisions of Article 16-A of the Tax Law.

(3) That petitioner's reported unincorporated business income is from his business of buying and selling on his own account, and exporting and importing chemicals.

(4) That in addition to his income from importing and exporting chemicals, he also receives income as an officer and employee of Jonatex Corporation whose business is the negotiation and administration of licensing arrangements under patents between foreign and American chemical companies.

(5) That the taxpayer's income from Jonatex Corporation is not interrelated or connected with the income from the taxpayer's business of importing and exporting chemicals.

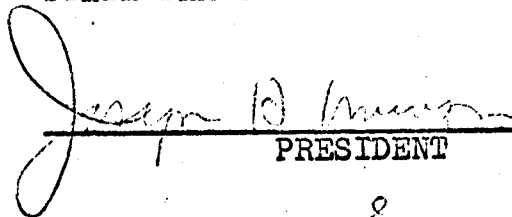
Based upon the foregoing findings, the State Tax Commission hereby

DETERMINES:

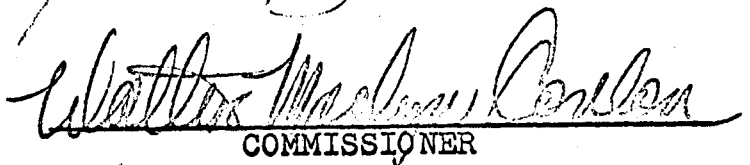
That the assessment B969845 for the year 1959 is incorrect; that the unincorporated business tax assessment for the said year was improper and should be cancelled and is hereby cancelled in full.

Dated: Albany, New York the 6th day of April , 1967.

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER



## BUREAU OF LAW

## MEMORANDUM

TO: Commissioners Murphy, Macduff and Conlon

FROM: Francis V. Dow, Hearing Officer

SUBJECT: In the Matter of the Applications of Nathan Nad for Revision or Refund of Unincorporated Business Taxes under Article 16-A of the Tax Law for the Years 1958 and 1959

A hearing with reference to the above matter was held before me at 80 Centre Street, New York, New York on March 6, 1967. The taxpayer did not appear, but his accountant who stated that he was familiar with the facts testified. The exhibits and evidence produced were as shown in the stenographic minutes submitted herewith.

An assessment was issued for the year 1958 on February 6, 1962 (Assessment No. BTF 255250) finding unincorporated business tax due in the amount of \$310.55 and an assessment was issued for the year 1959 on January 29, 1962 (Assessment No. B 997422) finding unincorporated business tax due in the amount of \$189.30. Both assessments were issued on the basis that the taxpayer's income received for services as an employee constituted a part of his income from a business regularly carried on by him.

The 1958 assessment was also based on the disallowance of \$1,411.02 of business expenses deducted by the taxpayer in computing his net unincorporated business income as unsubstantiated in conformity with the Federal audit of his return and the further unsubstantiated sum of \$200 for contributions also disallowed on the Federal audit.

The taxpayer filed unincorporated business tax returns for the years 1958 and 1959 in which he reported net business income as a furrier.


The taxpayer is engaged in the unincorporated business of manufacturing ladies Persian lamb coats. He acted as a cutter for his business which had approximately twelve employees.

The taxpayer was an employee and a 50% stockholder of Furs by Dana, Inc. which manufactures ladies mink garments. The taxpayer financed the corporation and performed limited services for it. The corporation was operated by the other 50% stockholder. The

taxpayer was paid a salary from the corporation from which social security and income taxes were deducted. The corporation had its own employees and numbered approximately twelve. It occupied a different section of the same factory premises occupied by the taxpayer's ladies Persian lamb coat business. Each business entity paid rent of its own to the landlord. The taxpayer's knowledge of the mink garment business is limited. Each business had its own equipment. Some customers were common to both businesses. Neither company employed any sales personnel. The taxpayer raised no issue with regard to the addition to his 1958 unincorporated business income of the deductions disallowed on the Federal audit of his 1958 return.

It is my opinion that the \$200 deducted by the taxpayer on his income tax return which was disallowed on the Federal audit of the return should not have been added to his business income since he had not deducted contributions in computing his net unincorporated business income. It is also my opinion that Furs by Dana, Inc. and the taxpayer's unincorporated business were not so interrelated that the salary from the corporation could be deemed to constitute receipts from the taxpayer's unincorporated business.

For the reasons stated above, I recommend that the determination of the Tax Commission partially cancelling the assessment for 1958 and cancelling the assessment for 1959 in the above matter be substantially in the form submitted herewith.

  
Hearing Officer

FVD:io

Enc. 5-8-67

April 28, 1967

STATE OF NEW YORK  
STATE TAX COMMISSION

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IN THE MATTER OF THE APPLICATIONS :  
OF :  
NATHAN NAD :  
FOR REVISION OR REFUND OF UNINCORPORATED :  
BUSINESS TAXES UNDER ARTICLE 16-A OF THE :  
TAX LAW FOR THE YEARS 1958 AND 1959 :  
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The taxpayer having duly filed applications for revision or refund of unincorporated business taxes under Article 16-A of the Tax Law for the years 1958 and 1959 and a hearing having been held in connection therewith at the office of the State Tax Commission, 80 Centre Street, New York, New York on March 6, 1967 before Francis V. Dow, Hearing Officer of the Department of Taxation and Finance at which hearing the taxpayer's accountant appeared and testified and the record having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That the taxpayer filed unincorporated business tax returns for the years 1958 and 1959 in which he reported income from his unincorporated business; that the taxpayer did not report income received as salary from Furs by Dana, Inc. in his unincorporated business tax return; that the taxpayer's salary from the corporation was in the amount of \$9,000 in 1958 and \$6,500 in 1959; that the Federal audit of the taxpayer's 1958 income tax return disallowed deductions in the amounts of \$390 deducted for traveling

and entertainment expenses, \$520 deducted for miscellaneous business promotion expenses, \$501.02 deducted for automobile depreciation and \$200 deducted for contributions as unsubstantiated.

(2) That a notice of assessment was issued on February 6, 1962 for the year 1958 (Assessment No. BTF 255250) finding additional unincorporated business tax due in the amount of \$310.55 on the basis that income received by the taxpayer from Furs by Dana, Inc. was subject to the unincorporated business tax since they constitute receipts from an unincorporated business regularly carried on by the taxpayer and that the amount of the deductions disallowed on the Federal audit of the taxpayer's income tax return was includible as income subject to unincorporated business tax; that a notice of assessment was issued on January 29, 1962 (Assessment No. B 997422) for the year 1959 finding additional unincorporated business tax due in the amount of \$189.30 on the basis that the salary income received from Furs by Dana, Inc. constituted receipts of an unincorporated business regularly carried on by the taxpayer.

(3) That the taxpayer was an employee and owned 50% of the stock of Furs by Dana, Inc.; that the taxpayer financed the said corporation; that the taxpayer performed only limited services for the corporation; that the only other stockholder of the corporation operated the business which was engaged in the manufacture of ladies mink garments; that the corporation employed approximately twelve persons.

(4) That the taxpayer conducted an unincorporated business in which he manufactured ladies Persian lamb coats; that the taxpayer employed approximately twelve persons in his business; that he acted as the cutter for the business.

(5) That the corporation and the taxpayer's unincorporated business were conducted in different sections of the same factory; that neither enterprise employed salesmen; that each enterprise owned its own manufacturing equipment; that each enterprise paid rent on the space that it utilized.

(6) That deductions were withheld for social security and income taxes from the income received by the taxpayer from Furs by Dana, Inc.

(7) That the taxpayer failed to offer any evidence to substantiate the expenses which he deducted for auto depreciation, travel and entertainment and miscellaneous expenses in the amount of \$1,411.02 which he deducted in computing his net unincorporated business income during 1958; that taxpayer did not deduct any contributions in computing his net unincorporated business income.

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

DETERMINES:

(A) That the taxpayer's unincorporated business was not integrated with Furs by Dana, Inc. and, accordingly, the salary income received by him from the corporation during the years 1958 and 1959 did not constitute receipts in a business regularly carried on by the taxpayer.

(B) That the taxpayer did not substantiate the sum of \$1,411.02 deducted by him in computing his 1958 net unincorporated business tax since he did not submit any evidence with regard to the deductions disallowed; that the addition of the sum of \$200 disallowed on the Federal audit of the taxpayer's 1958 return was improperly held to be subject to unincorporated business tax since the taxpayer took no deductions for contributions in computing

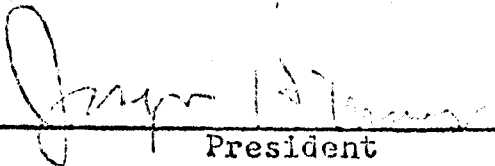
net unincorporated business income.

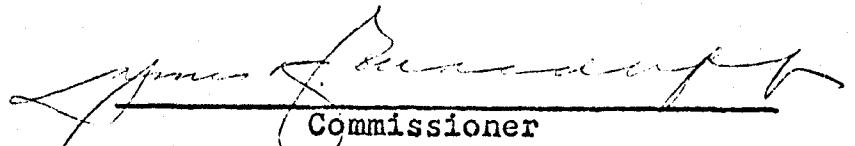
(C) That accordingly the additional tax assessed against the taxpayer for the year 1958 (Assessment No. BTF 255250) is hereby reduced from \$310.55 to \$38.38 and the balance of such assessment in the amount of \$272.17 is hereby cancelled; that to the extent that the assessment is herein modified the assessment is correct and hereby affirmed; that the taxpayer's application for revision or refund with respect thereto as modified be and the same is hereby denied.

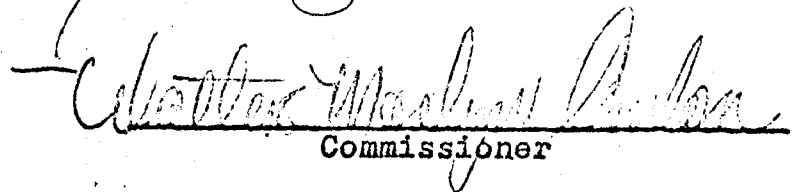
(D) That the assessment for the year 1959 (Assessment No. B 997422) is incorrect; that the application for revision or refund is hereby granted and the assessment for the year 1959 is hereby cancelled and revoked.

Dated: Albany, New York this 12th day of June , 1967.

STATE TAX COMMISSION

  
President

  
Commissioner

  
Commissioner

**STATE OF NEW YORK**

**STATE TAX COMMISSION**

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**IN THE MATTER OF THE PETITION**

**OF**

**JOE CARROLL**

**FOR REDETERMINATION OF A DEFICIENCY OR  
FOR REFUND OF UNINCORPORATED BUSINESS  
TAXES UNDER ARTICLE 23 OF THE TAX LAW  
FOR THE YEARS 1960, 1961 AND 1962**

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**JOE CARROLL, the taxpayer herein, having filed a petition for redetermination of a deficiency or for refund of unincorporated business taxes under Article 23 of the Tax Law for the years 1960, 1961 and 1962, and a hearing having been held in connection therewith at the office of the State Tax Commission at 80 Centre Street, New York, N. Y. on the 17th day of January, 1966, before Solomon Sles, Hearing Officer of the Department of Taxation and Finance, at which hearing the taxpayer appeared personally and was represented by Angelo Russo, Esq., and the matter having been duly examined and considered,**

**The State Tax Commission hereby finds;**

**(1) That at all of the times hereinafter mentioned the taxpayer Joe Carroll operated a bookstore at 1169 Avenue of the Americas, New York City, in his individual name; that at all of the times hereinafter mentioned the taxpayer was an officer and owner of 50% of the shares of the capital stock of Bee See, Inc., a domestic corporation organized under the laws of the State of New York in 1959, operating a bookstore located at 117 West 42nd Street, New York City; that at all of the times hereinafter mentioned the taxpayer was an officer and a 50% shareholder of the capital stock of Gargel Book Shop, Inc., a domestic corporation**

organized in 1953; that Carpel Book Shop, Inc. held a lease of the premises located at 259 West 42nd Street, New York City; that Carpel Book Shop, Inc. subleased a portion of the aforementioned premises and retained a small portion thereof for the sale of books, magazines and photographs; that in the middle of 1961 Carpel Book Shop, Inc. surrendered to the sublessee the space it formerly occupied and ceased its operations in the sale of books, magazines and photographs; that, thereafter, it engaged exclusively in the collection of rent of the entire premises from the sublessee.

(2) That the taxpayer filed personal income tax returns for the years 1960, 1961 and 1962; that the taxpayer reported on his personal income tax returns for said years compensation received from Carpel Book Shop, Inc. and Dee See, Inc. for services performed as an officer and director of said corporation; that the taxpayer also filed unincorporated business tax returns for said years and reported business income from the operation of his individually owned book store; that on February 8, 1963, the Department of Taxation and Finance issued a statement of audit changes against the taxpayer so as to include the salary income reported by him as additional business income subject to unincorporated business tax and, accordingly, issued a notice of deficiency therefor.

(3) That the bookstore operated by the taxpayer in his individual name was operated independently of Dee See, Inc. and Carpel Book Shop, Inc.; that the taxpayer carried in his own store books and magazines which were different from those carried by the two other corporations; that all of the three companies were independent of each other; that each books and books of account were kept separately; that each company had different employees and each company made its own purchases; that Dee See, Inc. carried



certain magazines exclusively which were not carried by any of the other firms; that the taxpayer in his individual proprietorship was selling certain photographs which were made up exclusively for him; that there was no exchange of merchandise from one store to another.

(4) That deductions were withheld for social security and income taxes from the income received by the taxpayer from Dee See, Inc. and Garpel Book Shop, Inc..

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

**DECIDES:**

(A) That the taxpayer's unincorporated business was not integrated with Dee See, Inc. and Garpel Book Shop, Inc.; that the compensation received by him from the aforementioned corporations as an officer and director thereof during the years 1960, 1961 and 1962 did not constitute receipts from a business regularly carried on by the taxpayer within the intent and meaning of Section 703 (b), Article 23 of the Tax Law.

(B) That, accordingly, the statement of audit changes and notice of deficiency for the years 1960, 1961 and 1962 are incorrect; that the taxpayer's petition for redetermination of a deficiency of unincorporated business taxes for the years 1960, 1961 and 1962 is hereby granted and the notice of deficiency he and the same is hereby cancelled and revoked.

Dated: Albany, New York, on the 13th day of February, 1968.

**STATE TAX COMMISSION**

/s/

JOSEPH H. MURPHY

**PRESIDENT**

/s/

A. BRUCE MANLEY

**COMMISSIONER**

**COMMISSIONER**