L 9 (9-66)

Unincorp. Bus. Tax Determination

A-Z

BUREAU OF LAW

MEMORANDUM

D. & M. Motive Parts Co

TO: Commissioners Murphy, Macduff and Conlon

FROM: Vincent [illegible], Hearing Officer

SUBJECT: Paul Drapin and Kenneth L. Mosher individually and as copartners doing business under the firm name and style of D & M Motive Parts Co.

Application for revision or refund of unincorporated business tax under Article 16-A of the Tax Law for the fiscal year ended April 30, 1959

Paul Drapin x-ref
Application for revision or refund of personal income tax under Article 16 of the Tax Law for the year 1959

Kenneth L. & Gladys L. Mosher x-ref
Application for revision or refund of personal income tax under Article 16 of the Tax Law for the year 1959

A hearing on the above matters was scheduled to be held before me December 1, 1966, and taxpayers did not appear in person or by representative.

The question involved is whether $[illegible], which is the portion of a condemnation award of $[illegible] to D & M Motive Parts Company not expended in the acquisition of similar or related use property, was correctly recognized as business income. Petitioners claim deduction of the adjusted cost of the condemned property as well as acquisition cost of replacement property. This deduction is not authorized by Tax Law section [illegible]. The personal income tax assessments are based upon the partners' distributive shares.

Mr. Michael [illegible], CPA, 366 Madison Avenue, New York City, appeared for the petitioners at a preliminary hearing on October 15, 1963. As a result of the hearing, he telephoned on November [illegible], 1963 and stated that he would recommend that taxpayers withdraw the demand for hearing. A withdrawal form was sent to Mr. [illegible] on November 3, 1963. Repeated telephone calls have been made, but no withdrawal statement has been received.

For the reasons stated above, I recommend that the decisions of the Tax Commission in the above matter affirming the denial of the applications for revision be substantially in the form submitted herewith.

/S/ VINCENT P. MOLINEAUX

Hearing Officer

February 20, 1967

VPM:ep (Feb 20, 1967)

Encs.

STATE OF NEW YORK

STATE TAX COMMISSION

IN THE MATTER OF THE APPLICATION

OF

PAUL DRAPIN AND KENNETH L. MECKER
INDIVIDUALLY AND AS CO-PARTNERS DOING
BUSINESS UNDER THE FIRM NAME AND STYLE
OF D & M MOTIVE PARTS COMPANY

FOR REVISION OR REFUND OF UNINCORPORATED
BUSINESS TAX UNDER ARTICLE 16-A OF THE
TAX LAW FOR THE FISCAL YEAR ENDED
APRIL 30, 1959

The taxpayers, Paul Drapin and Kenneth L. Mecker, having filed an application for revision or refund of unincorporated business tax under Article 16-A of the Tax Law for the fiscal year ended April 30, 1959 and a hearing having been scheduled thereon at the office of the State Tax Commission at 80 Centre Street, New York, New York for the first day of December, 1966 and an appearance having been made on behalf of the taxpayers, and the documents on file having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That the taxpayers filed a New York State partnership return for the fiscal year ended April 30, 1959 which showed no tax due.

(2) That on or about March 1, 1959 an award in the amount of $16,500 was made to taxpayers by the City of New York for land, buildings, fixtures and improvements acquired by condemnation, and replacement property was acquired by the

partnership for $9,397.36 leaving a balance of $7,102.64 which was not expended for replacement property.

(3) That Assessment B 421963 was issued December 5, 1960 assessing business tax in the amount of $194.39 based upon additional reportable income in the amount of $7,102.64 which was the portion of the award in condemnation not expended in the acquisition of other property similar or related in service to that which was condemned.

(4) That application for revision of assessment B 421963 was filed July 26, 1961, was denied November 30, 1961 and demand for hearing was filed with the Commission January 5, 1962.

(5) That the application is based upon deduction of the adjusted cost of the condemned property before deduction of the cost of replacement property which is not authorized under Section 354 of the Tax Law.

(6) That a hearing was scheduled for December 1, 1966 at 3 o'clock p.m. at 80 Centre Street, New York, New York and taxpayers were duly notified thereof.

(7) That taxpayers failed to appear at the said hearing or to present evidence or arguments to support the application for revision.

Based upon the foregoing findings and all of the evidence in the file, the State Tax Commission hereby

DETERMINES:

(A) That the portion of the condemnation award in the sum of $7,102.64 not expended on the acquisition of similar or related in use property was correctly recognized as business income.

(B) That Assessment B 421963 was correctly issued.

(C) That the denial of the application for revision is confirmed

AND IT IS SO ORDERED.

Dated: Albany, New York, on the 3rd day of March, 1967.

STATE TAX COMMISSION

/s/ JOSEPH H. MURPHY
PRESIDENT

/s/ JAMES R. MACDUFF
COMMISSIONER

/s/ WALTER MACLYN CONLON
COMMISSIONER