

Unincorp. Bus. Tax Determin.
BUREAU OF LAW
MEMORANDUM

Fargnoli Brothers

TO: Commissioners Murphy, Macduff and Conlen
FROM: Vincent P. Molineaux, Hearing Officer
SUBJECT:

**Louis & Sam Fargnoli d/b/a
Fargnoli Brothers
Application for revision or refund
of unincorporated business tax
under Article 16-A of the Tax Law
for the years 1958 and 1959**

**Louis & Sam Fargnoli d/b/a
Fargnoli Brothers
Petition for a redetermination
of a deficiency or for refund of
unincorporated business tax under
Article 23 of the Tax Law for the
year 1960**

**Louis & Anna Fargnoli
Application for revision or refund
of personal income tax under
Article 16 of the Tax Law for the
year 1959**

**Louis & Anna Fargnoli
Petition for a redetermination
of a deficiency or for refund
of personal income tax under
Article 22 of the Tax Law for
the year 1960**

**Sam & Marie Fargnoli
Application for revision or refund
of personal income tax under
Article 16 of the Tax Law for the
year 1959**

**Sam & Marie Fargnoli
Petition for a redetermination
of a deficiency or for refund of
personal income tax under
Article 22 of the Tax Law for the
year 1960**

BUREAU OF LAW

MEMORANDUM



TO:

FROM:

SUBJECT:

A hearing on the above matters was held before me at 184 Court Street, Binghamton, New York on October 7, 1966.

The question involved is whether the assessments based upon Federal audit are timely if made within one year from the date of filing of notice of change in net income by the Commissioner of Internal Revenue, although made more than three years after the due date of the returns.

Taxpayers on June 24, 1964 (within 30 days of notice by Internal Revenue) filed forms IT-115 (notice of change in net income by United States) showing additional income resulting from Federal audit in the amount of \$38,197.93 for 1958 and \$45,006.27 for the year 1959 and computed an additional normal tax of \$1,102.50 for the year 1958 and \$1,488.37 for the year 1959 but have refused to pay the additional amount of tax shown to be due.

Assessments based upon the increased income as disclosed were issued August 31, 1964 which was within the one year authorized by subdivision 4 of section 373 of the Tax Law.

Taxpayers claim that the words "provided, however, the provisions of this subdivision shall not affect the time within which an assessment may otherwise be made." in section 373(4) of the Tax Law prohibits the State Tax Commission from issuing any assessment beyond the three year statutory time limit set forth in subdivision 1 of section 373 of the Tax Law.

This question was considered by the Tax Commission in the application of Emil Adelaar and Florence Adelaar (1954 and 1955 assessments), and by the Law Bureau in a letter of October 24, 1962 addressed to Williams and Ray, Esqs. in the Matter of Bart Ruddy and Mae W. Ruddy, Earl J. Ruddy, Inc., and the contention of the taxpayers was held to be without merit. Copies of such determinations and memoranda are in the file.

For the reasons stated above, I recommend that the determination of the State Tax Commission in denying the application for revision be substantially in the form submitted herewith.

/s/

VINCENT P. MOLINEAUX

Hearing Officer

OK ms JH
VPM:am 2-28-67

February 21, 1967

**STATE OF NEW YORK
STATE TAX COMMISSION**

.....
IN THE MATTER OF THE APPLICATION

OF

**LOUIS & SAM FANCHOLI &/s/ a
FANCHOLI BROS.**

**FOR REVISION OR REFUND OF UNINCORPORATED
BUSINESS TAX UNDER ARTICLE 14-A OF THE
TAX LAW FOR THE YEARS 1958 and 1959**
.....

The taxpayers having filed an application for revision or refund of unincorporated business tax assessed under Article 14-A of the Tax Law for the years 1958 and 1959, and a hearing having been held at the office of the State Tax Commission at 184 Court Street, Binghamton, New York on October 7, 1964 before Vincent F. Malinscan, 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 taxpayers filed resident returns of unincorporated business tax under Article 14-A of the Tax Law for the years 1958 and 1959, and the amount shown to be due thereon was paid.

(2) That the Commissioner of Internal Revenue on May 26, 1964 changed the amount of taxable income of the taxpayers for the years 1958 and 1959 which resulted in an increase of unincorporated business income for the aforementioned years.

(3) That taxpayers on June 24, 1964 filed with the Department of Taxation and Finance forms IT-215 (Notice of Change in Net Income by United States Treasury Department

pursuant to Section 367 of the Tax Law) showing additional income resulting from Federal audit in the sum of \$38,197.93 for the year 1958 and \$45,006.27 for the year 1959; that the taxpayers computed on forms IT-115 the amount of additional normal tax due in the sum of \$1,102.50 for the year 1958 and \$1,488.37 for the year 1959 and that the taxpayers failed and refused to pay the additional normal taxes due as computed by them on said forms IT-115 on the ground that no assessment could be made more than three years after the return was made (Tax Law Sec. 373(1)).

(4) That on August 31, 1964 the Department of Taxation and Finance made assessments against the taxpayers for the years 1958 and 1959 (Assessment Nos. AB-054809 and AB-054810 in the sum of \$1,499.40 and \$1,934.74, respectively) based upon Federal audit as reported by the taxpayers on forms IT-115.

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

DETERMINES:

That the assessments made by the Department of Taxation and Finance (Assessment Nos. AB-054809 and AB-054810) for the years 1958 and 1959 were timely made in accordance with subdivision 4 of section 373 of the Tax Law and paragraph (4) of Article 571(a) of the Personal Income Tax Regulations; that, accordingly, the assessments are correct; that said assessments do not include any tax or other charge which could not have been lawfully demanded and that the applications filed in respect thereto be and the same are hereby denied.

DATED: Albany, New York on this 3rd day of March , 1967.

STATE TAX COMMISSION

/s/

JOSEPH H. MURPHY
PRESIDENT

/s/

JAMES R. MACDUFF
COMMISSIONER

/s/

WALTER MACLYN CONLON
COMMISSIONER