Unincorp. Bus. Tax Determinations
A-Z

Gittleson, Allan

STATE OF NEW YORK

STATE TAX COMMISSION

See also
Unincorp. Bus. Tax Determin.
A-Z
Carroll, Joe
(memorandum dated 9/7/67
referring to this case also)

- :

IN THE MATTER OF THE PETITION

OF

ALLAN GITTLESON

FOR A REDETERMINATION OF A DEFICIENCY OR
FOR REFUND OF UNINCORPORATED BUSINESS TAXES
UNDER ARTICLE 23 OF THE TAX LAW FOR THE YEAR
1960.

- :

Allan Gittleson, 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 year 1960 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 15th day of June, 1966, before [illegible], Hearing Officer of the Department of Taxation and Finance, at which hearing the taxpayer was represented by Joseph H. [illegible], Esq., and Sidney S. Berg, CPA, and the matter having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That the taxpayer filed a personal income tax resident return and unincorporated business tax return for the year 1960; that on his personal income tax return, the taxpayer reported total wages in the amount of $18,200.04 received during said year from [illegible] Manufacturing Co., Inc.; that the taxpayer reported net business income in the amount of $19,946.22; that on March 30, 1964, the Department of Taxation and Finance issued a statement of audit changes including the salary income reported by the taxpayer as additional business income subject to unincorporated business tax; and, accordingly, issued the notice of deficiency therefor.

(2) That 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, N. Y., operating a

sales agency selling fishing tackle hardware only through independent sales representatives or agents; that said company maintained no inventory, but merely purchased whatever merchandise it sold to meet its sales requirements; that Allen Manufacturing Company had no paid employees.

(3) That during the year 1960, the taxpayer was president and a director of T. O. D. Manufacturing Co., Inc., a domestic corporation, organized under the laws of the State of New York in 1945; that the taxpayer owned 66% of the shares of the capital stock in said corporation; that said corporation was primarily engaged in the manufacture of defense parts for the defense program consisting of push rod covers for reciprocal engines; that, in addition, the corporation also manufactured fishing tackle hardware which it sold to Allen Manufacturing Company; that the corporation maintained its plant at the same premises as that of the individual proprietorship; that both entities paid rent for their proportionate share of the space occupied by them; that the manufacture of fishing tackle hardware by T. O. D. Manufacturing Co., Inc. during the year in issue approximated two to three percent of its total manufacturing business; that during the year in issue the total sales of the individual proprietorship amounted to $1,273,000, of which only $80,000 of merchandise was purchased from T. O. D. Manufacturing Co., Inc. and the balance from other manufacturers of fishing tackle hardware; that separate books and records were maintained by each of the entities involved herein.

(4) That the services rendered by the taxpayer to T. O. D. Manufacturing Co., Inc. as president consisted of supervising and administering the proper operation of the corporation's business, determining production policies, methods, employment of key personnel, etc.; that T. O. D. Manufacturing Co., Inc. withheld Federal Social Security Taxes and Federal and State Income Taxes from the compensation paid to the taxpayer for his services

as president and director.

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 T. C. D. Manufacturing Co., Inc.; that the salary income received by him from the corporation during the year 1960 did not constitute receipts from a business regularly carried on by the taxpayer.

(B) That the statement of audit changes and notice of deficiency made against the taxpayer for the year 1960 are incorrect; that the taxpayer's petition for redetermination of a deficiency or for refund of unincorporated business tax is hereby granted and the notice of deficiency for the year 1960 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