

BUREAU OF LAW

MEMORANDUM

Unincorp. Bus. Tax
Determinations A-Z
Jonas, Frank E.

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, 1964.

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 Jonatan 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.

/s/

VINCENT P. MOLINEAUX

Hearing Officer

VPM:rlp/bdg

Enc.

3-15-67

March 14, 1967

STATE OF NEW YORK

STATE TAX COMMISSION

IN THE MATTER OF THE APPLICATION

OF

FRANK E. JONES

**FOR REVISION OR REFUND OF UNINCORPORATED
BUSINESS TAX UNDER ARTICLE 16-A
OF THE TAX LAW FOR THE YEAR 1959**

The taxpayer Frank E. Jones 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, 1961 before Vincent P. Malinowski, 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.

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

(g) That the taxpayer's income from Janstox 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 \$9690.45 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 23rd day of March , 1967.

STATE TAX COMMISSION

/s/

JOSEPH H. MURPHY

PRESIDENT

/s/

JAMES R. MACDUFF

COMMISSIONER

/s/

WALTER MACLYN CONLON

COMMISSIONER

**STATE OF NEW YORK
STATE TAX COMMISSION**

IN THE MATTER OF THE PETITION

OF

FRANK E. JONAS

**FOR A REDETERMINATION OF A DEFICIENCY
OR FOR REFUND OF UNINCORPORATED BUSI-
NESS TAX UNDER ARTICLE 23 OF THE TAX
LAW FOR THE YEAR 1961**

Frank E. Jonas, having filed a petition for redetermination of deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the year 1960, file # 1-8451637, and a hearing having been held at the office of the State Tax Commission, 80 Centre Street, New York, New York, on the 26th day of September, 1966, before Vincent P. Mulinaux, 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 1961 in which he reported taxable income in the sum of \$4,594.46.

(2) That on April 13, 1965 the State Tax Commission issued a statement of audit changes based upon income received from Jonston Corporation reported as personal income, considered part of the business income and subject to unincorporated business tax under the provisions of Article 23 of the Tax Law.

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

Based upon the foregoing findings, the State Tax Commission hereby

DETERMINE:

That the statement of audit changes adjusting the petitioner's New York State unincorporated business income for the year 1951 is incorrect; that the petition for redetermination is granted and the notice of deficiency for such year is hereby cancelled and revoked.

Dated: Albany, New York the 23rd day of March, 1957.

STATE TAX COMMISSION

/s/

JOSEPH H. MURPHY

PRESIDENT

/s/

JAMES R. MACDUFF

COMMISSIONER

/s/

WALTER MACLYN CONLON

COMMISSIONER

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