

**BUREAU OF LAW
MEMORANDUM***Unincorp. Bus. Tax
Determinations A-Z
Inglis-Jones, Kay M.*

TO: Commissioners Murphy, Maeduff and Conlon

FROM: Francis V. Dow, Hearing Officer

SUBJECT: In the Matter of the Petition of
KAY M. INGLIS-JONES for a Redeter-
mination of a Deficiency or for
Refund of Unincorporated Business
Taxes Under Article 23 of the Tax
Law for the Year 1962

A hearing with reference to the above matter was held before me at 80 Centre Street, New York, New York on June 22, 1967. The appearances and exhibits produced were as shown in the stenographic minutes submitted herewith.

The issue involved herein is whether the activities of the taxpayer as a fashion and publicity consultant and in the management area constitute the carrying on of an unincorporated business.

The taxpayer filed a resident tax return for 1962 in which she reported income of \$23,780.07 from fees received from Revlon, Inc. as a fashion and publicity consultant and for management duties. A notice of deficiency and statement of audit changes were issued on October 25, 1965 assessing unincorporated business tax and interest in the sum of \$688.20 on the basis that the taxpayer's activities for Revlon, Inc. constituted the carrying on of an unincorporated business and the income derived therefrom was subject to the tax imposed under Article 23 of the Tax Law; that during 1962, the taxpayer performed duties for Revlon, Inc. pursuant to an agreement. The agreement provided that the taxpayer act as a public relations consultant for a period of one year in connection with the opening of a beauty salon in New York City. Under the terms of the agreement, the duties of the taxpayer included, among other things: writing and placing articles in newspapers and magazines; organizing and executing a program of complementary services for selected fashion leaders, celebrities and members of the press; developing desirable clientele for the beauty salon; preparing announcements, letters and other mailing pieces to patrons and prospective patrons; organizing, developing and executing, as determined by Revlon, Inc., any public relations programs deemed desirable to promote the beauty salon.

The agreement provided that the taxpayer was to be paid a fee of \$18,600 payable in equal monthly installments and, in addition, the taxpayer was to be reimbursed for her reasonable out-of-pocket expenses including but not limited to expenses for travel and entertainment on the submission of detailed vouchers.

BUREAU OF LAW
MEMORANDUM

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SUBJECT:

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The taxpayer was provided with secretarial services as determined by Revlon, Inc. The agreement also provided that the taxpayer would be requested to accept additional responsibilities as determined by Revlon, Inc. in the management area, such as the assistance in the selection and recruitment of staff, daily contact with customers and supervision of daily operations. For such management duties, the taxpayer was to be compensated at the annual rate of \$7,500. Revlon, Inc. reserved the right to terminate the management portion of the agreement at any time. The taxpayer performed services under the terms of the agreement for approximately two years.

In the performance of her duties, the taxpayer was subject to the direction and control of Revlon, Inc. although some of the details of her work were left to her initiative. Mailing lists used by the taxpayer were provided by Revlon, Inc. Some of the out-of-pocket expenses incurred by the taxpayer were not reimbursed to her because she did not request such reimbursement. No social security or income taxes were withheld from the taxpayer's earnings.

Prior to working for Revlon, Inc., the taxpayer had never been engaged for business or herself. Approximately 17 years ago, she had done some consultant work for Vanity Fair. The taxpayer has not been employed since she terminated her services with Revlon, Inc.

Although the taxpayer testified that she thought that Revlon, Inc. considered her an independent contractor (pg. 8, Minutes), the taxpayer considered herself to be an employee (pg. 18, Minutes). The contract is vague with respect to her relationship with Revlon, Inc.

It is my opinion that the taxpayer's relationship with Revlon, Inc. was that of master and servant and not that of an independent contractor, since Revlon, Inc. controlled the manner and means of performing the work for which she contracted.

For the reasons stated above, I recommend that the decision of the State Tax Commission granting the taxpayer's petition in the above matter be substantially in the form submitted herewith.

/s/ FRANCIS V. DOW
Hearing Officer

FVD:pg
Enc.

July 27, 1967

8-31-67

STATE OF NEW YORK

STATE TAX COMMISSION

.....
IN THE MATTER OF THE PETITION

OF

KAY M. INGLIS-JONES

**FOR A REDETERMINATION OF A DEFICIENCY
OR FOR REFUND OF UNINCORPORATED BUSI-
NESS TAXES UNDER ARTICLE 23 OF THE
TAX LAW FOR THE YEAR 1962**
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The taxpayer 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 1962 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 June 22, 1967 before Francis V. Dow, Hearing Officer of the Department of Taxation and Finance, at which hearing the taxpayer testified and was represented and the record having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That the taxpayer filed a resident income tax return for the year 1962 in which she reported income of \$23,750.67 from fees received from Revlon, Inc. as a fashion and publicity consultant and for duties in the management area.

(2) That a notice of deficiency and statement of audit changes were issued for the year 1962 on October 25, 1963 (File No. 2-3797791) determining that unincorporated business tax and interest in the sum of \$639.39 were due on the basis that the taxpayer's activities as a fashion and publicity consultant constituted the carrying on of an unincorporated business and that the income derived therefrom was subject to the tax imposed under Article 23 of the Tax Law.

(3) That the taxpayer entered into an agreement with Revlon, Inc. for a period of one year as a public relations consultant in connection with the opening of a beauty salon in New York City; that the duties of the taxpayer included, among other things: writing and placing articles in newspapers and magazines; organizing and executing a program of complimentary services for selected fashion leaders, celebrities and members of the press; developing desirable clientele for the beauty salon; preparing announcements, letters and other mailing pieces to patrons and prospective patrons; organizing, developing and executing as determined by Revlon, Inc. any public relations programs deemed desirable to promote the beauty salon; that for her services, the agreement provided that the taxpayer was to be paid a fee of \$12,500 payable in equal monthly installments and, in addition, the taxpayer was to be reimbursed for her reasonable out-of-pocket expenses including but not limited to expenses for travel and entertainment on the submission of detailed vouchers; that the taxpayer was provided with secretarial services as determined by Revlon, Inc.; that the agreement also provided that the taxpayer would be requested to accept additional responsibilities as determined by Revlon, Inc. in the management area, such as the assistance in the selection and recruitment of staff, daily contact with customers and supervision of daily operations; that for such management duties, the taxpayer was to be compensated at the annual rate of \$7,500; that Revlon, Inc. reserved the right to terminate the management portion of the agreement at any time; that the taxpayer performed services under the terms of the agreement for approximately two years.

(4) That in the performance of her duties, the taxpayer

was told when to contact, how to organize, develop and execute public relations programs; that the taxpayer was not instructed as to some of the details of her work; that mailing lists used by the taxpayer were provided by Revlon, Inc.; that the taxpayer did not request and was not given reimbursement for some of her out-of-pocket expenses; that no social security or income taxes were withheld from the taxpayer's earnings.

(5) That prior to entering into her contract with Revlon, Inc., the taxpayer had never been in business; that the taxpayer had not been employed since the completion of her contract with Revlon, Inc.

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

HOLDERS:

(A) That the activities of the taxpayer as a fashion and publicity consultant and in the management area for Revlon, Inc. were conducted by her as an employee and not as an independent contractor; that such activities of the taxpayer did not constitute the carrying on of an unincorporated business within the intent and meaning of Section 703 of the Tax Law.

(B) That the statement of audit charges for the year 1962 is incorrect; that the petition for redetermination is hereby granted and the notice of deficiency for the year 1962 (File No. 2-3797791) is hereby cancelled and revoked.

DATED: Albany, New York on this 22nd day of September , 1967.

STATE TAX COMMISSION

/s/ JOSEPH H. MURPHY
~~Commissioner~~

/s/ JAMES R. MACDUFFE
~~Commissioner~~

/s/ WALTER MACLYN CONLON
~~Commissioner~~