

BUREAU OF LAW  
MEMORANDUM*Unincorp. Bus. Tax Determinations*  
*Kass, Jacob*

A-2

TO: Commissioners Murphy, Macduff and Conlon

FROM: Francis V. Bow, Hearing Officer

SUBJECT: In the Matter of the Application of  
Jacob Kass for Revision or Refund of  
Unincorporated Business Taxes under  
Article 23 of the Tax Law for the  
Year 1966

A hearing with reference to the above matter was held before me at 88 Centre Street, New York, New York on January 12, 1967. The appearances and the evidence produced were as shown in the stenographic minutes submitted herewith.

The issue involved herein is whether the income received by the taxpayer in the form of salary is subject to unincorporated business tax. A notice of assessment of additional tax was issued on September 11, 1966 (Assessment No. AB 628531) assessing additional unincorporated business tax due in the amount of \$198.71 holding that the taxpayer's salary received from Gibraltar Corporation of America, Inc. during the year 1966 in the amount of \$9,936 was subject to the tax. The taxpayer contended that his activities as an employee of Gibraltar Corporation of America, Inc. were not connected with his activities in his own business.

The taxpayer was a full-time employee of Gibraltar Corporation of America, Inc. and as such was covered by workmen's compensation insurance. Deductions were taken from his salary for social security and income taxes. His duties consisted of the sale of boilers to supply houses used for residential heating purposes, the inspection of boilers and trouble shooting in connection with such sales. The taxpayer was reimbursed for all of his expenses. He received a straight salary and received no commissions on sales made by him. The taxpayer was under the direction and control of his employer. He reported to his employer three or four times a day.

The taxpayer also conducted a business during his off-hours at night and weekends under the name of Peninsula Associate Sales. He maintained an office in his home. In his business he acted as a sales representative for Spartan Convecter Company for whom he sold radiators and baseboards used in multiple dwellings. The taxpayer also purchased these convectors and baseboards from the Spartan Convecter Company for his own account and in turn billed his customers on their sale. He maintained no inventory.

BUREAU OF LAW  
MEMORANDUM

(73-2-67)

TO:  
FROM:  
SUBJECT:

On some occasions the taxpayer sold products of the Spartan Conveyor Company and the Gibraltar Corporation of America, Inc. to the same customers. As a result of his employment by the Gibraltar Corporation of America, Inc. the taxpayer made business contacts which furthered his own business. The taxpayer filed an unincorporated business tax return in which he included his business income but did not include his salary from Gibraltar Corporation of America, Inc.

It is my opinion that the salary received by the taxpayer from the Gibraltar Corporation of America, Inc. is not subject to the unincorporated business tax. The taxpayer was treated as an employee. Deductions were withheld from his salary for income and social security taxes. He was covered by unemployment insurance and workmen's compensation insurance. His services as an employee did not constitute part of his business.

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

/s/

FRANCIS V. DOW

~~NOTHING OFFICIAL~~

FVB:rlp  
Enc.  
May 3, 1967

5-5-67

**STATE OF NEW YORK**  
**STATE TAX COMMISSION**

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**IN THE MATTER OF THE APPLICATION**

**OF**

**JACOB KASS**

**FOR REVISION OR REFUND OF UNINCORPORATED  
BUSINESS TAXES UNDER ARTICLE 23 OF THE  
TAX LAW FOR THE YEAR 1960**  
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Jacob Kass, the taxpayer herein, having duly filed an application for revision or refund of unincorporated business tax 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, 80 Centre Street, New York, New York on January 12, 1967 before Francis V. Dow, Hearing Officer, of the Department of Taxation and Finance, at which hearing the taxpayer appeared and testified, and the record having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That the taxpayer filed a New York State resident tax return and an unincorporated business tax return in which he included all of his income except his salary from Gibraltar Corporation of America, Inc. for the year 1960; that an assessment (Assessment No. AB 022651) in the amount of \$398.71 was issued on the basis that salary received from Gibraltar Corporation of America, Inc. in the amount of \$9,936 was additional income subject to the unincorporated business tax.

(2) That the taxpayer was an employee of Gibraltar Corporation of America, Inc. whose duties consisted of inspecting boilers, trouble shooting and selling boilers used for residential heating purposes; that the taxpayer received a salary for his services from which salary social security and income taxes were withheld and was covered by workmen's compensation, disability and unemployment insurance; that the taxpayer received no commissions on sales; that the taxpayer was subject to the direction and control of Gibraltar Corporation of America, Inc. and that the taxpayer was reimbursed for his expenses by his employer.

(3) That the taxpayer was engaged in business which he conducted during hours which he was not engaged by Gibraltar Corporation of America, Inc. as an independent contractor doing business under the name of Peninsula Associate Sales acting as a sales representative for Spartan Convecter Company selling radiators and baseboards used in multiple dwellings; that the taxpayer also sold products of the Spartan Convecter Company on his own account; that the taxpayer maintained an office in his home in connection with his business; that he employed no assistants in his business; that the taxpayer maintained no inventory; that as a result of his employment by Gibraltar Corporation of America, Inc. the taxpayer developed business contacts which furthered his own business.

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

**DETERMINES:**

(A) That the salary received by the taxpayer for his services as an employee of Gibraltar Corporation of America, Inc. in the amount of \$9,936 was not subject to unincorporated business tax since such services did not constitute part of the business regularly carried on by the taxpayer.

(B) That accordingly, the assessment for the year 1960 (Assessment No. AB 022651) for unincorporated business tax on said earnings was improper and should be cancelled and the same is cancelled in full.

Dated: Albany, New York this 15th day of May, 1967.

**STATE TAX COMMISSION**

/s/

JOSEPH H. MURPHY  
**President**

/s/

JAMES R. MACDUFF  
**Commissioner**

/s/

WALTER MACLYN CONLON  
**Commissioner**