

Unincorp. Bus. Tax Determinations
BUREAU OF LAW

MEMORANDUM

A-Z
Kong, Philip L. Y.

TO: Commissioners Murphy, Macduff and Conlon
FROM: Francis V. Bow, Hearing Officer
SUBJECT: PHILIP L. Y. KONG

**In the Matter of the Application for
Revision or Refund of Unincorporated
Business Taxes Under Article 23 of the
Tax Law for the Year 1960**

A hearing with reference to the above matter was held before me at 60 Centre Street, New York, New York on June 22, 1967. The appearances and the evidence produced were as shown in the stenographic minutes and exhibits submitted herewith.

The issue involved in this matter is whether compensation received by the taxpayer from United Asia Enterprises, Ltd. constituted receipts of a business regularly carried on by him.

The taxpayer filed an unincorporated business tax return for the year 1960 in which he reported business income of \$25,000.00 from his activities in the sale of mutual funds, as general agent for a life insurance company and operating a travel agency. The taxpayer did not include in his business income \$3,500.00 which he received from United Asia Enterprises, Ltd. for services performed for it.

An assessment for additional unincorporated business taxes was issued on August 23, 1962 (Assessment No. AB 020134) which assessed additional tax due in the amount of \$118.18.

United Asia Enterprises, Ltd. was formed in 1960 for the purpose of importing ginseng from Korea. The taxpayer owned 51% of its stock and was its president. He was compensated at the rate of \$500.00 a month for his services. His services consisted of importing samples of ginseng, securing approval of the Food and Drug Administration for the distribution and sale of the ginseng, securing a letter of credit from the Bank of China and selling ginseng to distributors.

No deductions were withheld for social security or income taxes from the compensation received by the taxpayer from the corporation.

The office of the corporation was located in the same place as the office where the taxpayer conducted his mutual fund, insurance and travel agency businesses. The facilities of the office were used by all of the businesses located there. The corporation paid the

taxpayer \$300.00 during the year for the use of the office facilities. The business of United Asia Enterprises, Ltd. was conducted by the taxpayer, another officer of the corporation and an employee.

In my opinion the compensation received by the taxpayer from United Asia Enterprises, Ltd. did not constitute receipts of a business regularly carried on by the taxpayer and was compensation received by him as an officer of a corporation. The compensation received was for services not directly connected with or in furtherance of his other business activities.

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

/s/

FRANCIS V. DOW

FVD:ac
Enc.

September 14, 1967

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STATE OF NEW YORK

STATE TAX COMMISSION

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IN THE MATTER OF THE APPLICATION

OF

PHILIP L. Y. HUNG

**FOR REVISION OR REFUND OF UNINCORPORATED
BUSINESS TAXES UNDER ARTICLE 13 OF THE
TAX LAW FOR THE YEAR 1960**
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The taxpayer, Philip L. Y. Hung, having filed an application for revision or refund of unincorporated business taxes under Article 13 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 the third day of June 1961 before Francis V. Row, 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 an unincorporated business tax return for the year 1960 in which he reported income of \$22,500.00 from his businesses of selling mutual funds, acting as a general agent for a life insurance company and operating a travel agency.

(2) That an assessment of additional unincorporated business taxes was issued on August 23, 1960 (Assessment No. AS 000136) which assessed additional tax due in the amount of \$118.18 on the basis that the income of the taxpayer in the amount of \$1,500.00 from United Asia Enterprises, Ltd. was connected with and in furtherance of his business activities and includible in his business income.

(3) That United Asia Enterprises, Ltd. was formed in 1959; that the taxpayer owns 51% of the stock of the corporation; that the

corporation was engaged in the business of importing ginseng from Korea; that the taxpayer was the president of the corporation; that the services performed by the taxpayer in behalf of the corporation consisted of importing samples of ginseng, securing approval from the Food and Drug Administration for the distribution and sale of the ginseng, obtaining a letter of credit from the Bank of China and the selling of the ginseng.

(4) That the office of United Asia Enterprises, Ltd. was located at 2 West Street, New York, New York; that the taxpayer conducted his other business activities at the same location; that the facilities of the office were used by all of the businesses located there; that the taxpayer was paid \$100.00 a month for the space used by the corporation at that address; that the business of the corporation was conducted by the taxpayer, by another officer of the corporation and one employee.

(5) That the \$3,500.00 received by the taxpayer from United Asia Enterprises, Ltd. was received by the taxpayer at the rate of \$500.00 a month for his services; that no deductions were withheld from such income for social security or income taxes.

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

HOLDINGS:

(A) That the compensation paid to the taxpayer by United Asia Enterprises, Ltd. was for services rendered by him as an officer of a corporation.

(B) That such compensation paid to the taxpayer was for services not directly connected with or in furtherance of his other business activities and did not constitute receipts of a business regularly carried on by him.

(C) That accordingly the assessment (Assessment No.

AS 000136) for the year 1966 for unincorporated business taxes was not proper and should be cancelled and the same is hereby cancelled in full.

DATED: Albany, New York on this 27th day of November, 1967.

~~STATE TAX COMMISSIONER~~

/s/

JOSEPH H. MURPHY
~~STATE TAX COMMISSIONER~~

~~STATE TAX COMMISSIONER~~

/s/

WALTER MACLYN CONLON
~~STATE TAX COMMISSIONER~~