

BUREAU OF LAW

MEMORANDUM

Unincorp. Bus. Tax Determinations A-2
Lawrence, Henry (Est. of)
and
Nora

TO: Commissioners Murphy, Macduff and Conlon
FROM: E. H. Best, Counsel
SUBJECT: Nora Lawrence, individually and as Administratrix
of the Estate of Henry Lawrence, Deceased

Petition for redetermination of a deficiency or
for refund of unincorporated business taxes under
Article 23 of the Tax Law for the year 1960

The issue presented herein is whether income in the
sum of \$13,392.44 reported by the decedent taxpayer,
Henry Lawrence, as normal income represented additional
business income subject to unincorporated business tax in
accordance with section 705 of the Tax Law.

The decedent, Henry Lawrence, was engaged in a retail
tailoring, cleaning and pressing business in New York City
from 1957 until his death on September 20, 1962. The taxpayer's
estate was unable to submit any books and records on the ground
that the records were left with the taxpayer's former accountant
who subsequently died. The taxpayer reported on his normal tax
return the amount of \$13,392.44 as income from other sources,
which amount was not included on his unincorporated business
tax return. Upon failure of the taxpayer to supply information
as to the source of the aforesaid amount, an additional
unincorporated business tax was assessed in the amount of
\$434.86. The taxpayer's representative contends that this
amount represents wagering gains and is not subject to unincorporated
business taxes. However, the representative's statements with
respect to the nature of the deceased taxpayer's activities
(page 18 of the minutes) could also be interpreted to mean that
in addition to wagering, the taxpayer was also in the gambling
business by taking bids and policy numbers.

The primary question to be resolved therefore is the
source of the taxpayer's other income. Such income could be
derived from three different sources: (1) the taxpayer's
business of retail tailoring, (2) from gambling, or (3) from
wagering. Unincorporated business taxes could be imposed if
the income was derived from the taxpayer's business of retail
tailoring or from gambling. There is some doubt, however, as
to whether unincorporated business taxes could be imposed if
the taxpayer's income was derived solely from wagering.

A report of Federal audit for the period under review and periods prior and subsequent thereto was examined in order to help ascertain the source of the other income, despite the fact that the report referred to income other than the \$13,392.44 listed by the taxpayer as income from other sources. Examination of such reports disclosed that the Internal Revenue Service imposed a 5 per cent negligence penalty on the ground that the taxpayer was engaged in illegal activities of a borderline nature and had failed to file proper reports. The Internal Revenue Service characterized certain unreported additional income for the year 1960 either as wagering gains or as income from gambling, but did not impose the 10 per cent gambler's excise tax against the taxpayer. Thus, the nature of the source of the taxpayer's other income could not be ascertained from the report of Federal audit.

The Hearing Officer's proposed determination makes no finding as to whether or not the gains were from wagering or gambling. Instead, the additional income is ascribed to the taxpayer's tailoring business on the ground that no books and records of the taxpayer are available to show otherwise.

In view of the lack of such records or the lack of any clear proof as to the nature of the other income, I believe that the Hearing Officer's proposed determination denying the petition should be approved on the grounds set forth by the Hearing Officer.

If you agree, kindly sign one original and three copies of the proposed determination and return to the Law Bureau for further processing.

/s/

E. H. BEST

Counsel

MS:aw:ca

Enc. 2-28-67

February 23, 1967

STATE OF NEW YORK

STATE TAX COMMISSION

IN THE MATTER OF THE PETITION

OF

**NORA LAWRENCE, AS ADMINISTRATRIX OF THE
ESTATE OF HENRY LAWRENCE, DECEASED, AND
NORA LAWRENCE, his wife**

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

Nora Lawrence, individually and as administratrix of the Estate of Henry Lawrence, Deceased, having filed a petition for redetermination of a deficiency or for 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 at 80 Centre St., New York, N.Y. on the 23rd day of September, 1964, before Solomon Sles, Hearing Officer of the Department of Taxation and Finance at which hearing the taxpayer was represented by Geoffrey H. Murrain, Esq., testimony having been taken and the matter having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That the taxpayers, Henry and Nora Lawrence, filed a joint New York State income tax resident return for the year 1960 in which they reported Federal adjusted gross income in the sum of \$88,917.94; that included in said return the taxpayers reported net profit from business conducted by the decedent, Henry Lawrence, in the sum of \$6,947.06, income from interest, \$978.04 and income from other sources in the sum of \$13,392.44; that they reported New York itemized deductions in the sum of \$1,303.22 and New York taxable income in the sum of \$17,814.32; that the taxpayer Henry Lawrence, filed a New York State unincorporated business tax return for the year 1960 in which he reported total receipts in the sum of \$11,279.70 and business expenses in the sum of \$4,332.64 or a net profit from said business in the sum of \$6,947.06; that on April 13, 1964, the Department of Taxation and

Finance issued a statement of audit changes imposing additional unincorporated business tax on the sum of \$13,392.⁴⁴ reported as income from other sources and computed unincorporated business tax thereon in the sum of \$434.⁸⁶ with interest of \$70.17 for a total of \$913.03 and accordingly issued a notice of deficiency therefor.

(2) That the decedent Henry Lawrence during the period from approximately 1957 to 1962 operated a retail tailoring, cleaning and pressing establishment at 2786 8th Avenue in the City and State of New York; that the decedent taxpayer, Henry Lawrence, died on December 20, 1962; that his wife Bern Lawrence was appointed administratrix of his estate in the Probate Court of New Jersey, sometime in 1963; that during the year 1960 the taxpayer operated the aforementioned retail cleaning and pressing establishment in his own name; that he did not maintain any cleaning machines on the premises but did his own pressing; that in connection with the aforementioned business the decedent taxpayer maintained a day-book to indicate receipts and disbursements and maintained a regular checking account; that all monies received by the decedent taxpayer were deposited in the aforesaid checking account; that the records of the decedent taxpayer including the day-book, bank statements, were turned over by the taxpayer to his accountant who subsequently died in 1963; that the whereabouts of the aforementioned books and records are unknown and not available to the taxpayer Bern Lawrence or her attorney and that the same were not produced or submitted at the hearing.

(3) That although the taxpayers contend that the income of \$13,392.⁴⁴ reported in Item 12, Schedule C of the income tax return for the year 1960 represented income from wagering gains and in no way represented business income subject to unincorporated business tax, they have failed to establish that the above mentioned income did not represent additional income from the business operated and conducted by the decedent taxpayer Henry Lawrence; that the additional income of \$13,392.⁴⁴ represented and was properly considered additional business income subject to unincorporated business tax in accordance with the intent and meaning of sections 704 & 705, Article 23 of the Tax Law.

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

DETERMINES AND DECIDES:

That the income reported by the taxpayers on their New York State income tax resident return for the year 1960 under Item 12, Schedule C thereof in the sum of \$13,392.⁴⁴ constituted additional business income of the decedent taxpayer Henry Lawrence subject to unincorporated business tax in accordance with sections 704 & 705, Article 23 of the Tax Law; that the statement of audit charges and notice of deficiency are correct; that the same do not include any taxes or other charges which could not have been lawfully demanded and that the taxpayer's petition for redetermination of a deficiency of unincorporated business tax be and the same is hereby dismissed.

DATED: Albany, New York, on the 6th day of March, 1967.

STATE TAX COMMISSION

/s/

JOSEPH H. MURPHY

President

/s/

JAMES R. MACDUFF

Commissioner

/s/

WALTER MACLYN CONLON

Commissioner