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Unincorp. Bus. Tax Determinations A-Z

Libirk Brothers

BUREAU OF LAW

MEMORANDUM

TO: State Tax Commission

FROM: Francis V. Dow, Hearing Officer

SUBJECT: In the Matter of the Applications of LIBIRK BROTHERS For Revision or Refund of Unincorporated Business Taxes Under Article 16-A of the Tax Law for the Years 1957, 1958 and 1959

In the Matter of the Petition of LIBIRK BROTHERS For a Redetermination of a Deficiency or For Refund of Unincorporated Business Taxes Under Article 23 of the Tax Law for the Year 1960

A hearing with reference to the above matters was held before me at 80 Centre Street, New York, New York on December 21, 1967. The appearances and the evidence produced were as shown in the stenographic minutes submitted herewith.

The issue involved in these matters is whether salaries received by the members of the taxpayer partnership from Bond Street Jewel Case Corporation were subject to the unincorporated business tax.

The taxpayer filed New York State income tax and unincorporated business tax partnership returns for the years 1957, 1958, 1959 and 1960. The reported net income of the partnership and the salaries of the partners from Bond Street Jewel Case Corporation for the years involved were as follows:

Year	Partnership	Sol Libirk	Sam Libirk	Milton Bunn
1957	$[illegible],[illegible].25	$ 6,[illegible].00	$ 6,[illegible].00	$[illegible]
1958	[illegible],[illegible].92	[illegible],[illegible].00	[illegible],[illegible].00	[illegible]
1959	60,[illegible].18	10,400.00	10,400.00	[illegible]
1960	70,630.20	10,400.00	10,400.00	[illegible]

Assessments were issued for the years 1957, 1958 and 1959 assessing additional unincorporated business tax as follows:

YEAR	ASSESSMENT NO.	TAX
1957	NYA [illegible]	$ [illegible]
1958	NYA [illegible]	[illegible]
1959	NYA 99095	1,[illegible]

A Notice of Deficiency and a Statement of Audit Changes were issued for 1960 determining additional unincorporated business tax liability of $1,361.65. The additional tax assessed and determined was on the basis that salaries received by the members of the taxpayer partnership from Bond Street Jewel Case Corporation were subject to unincorporated business tax and in addition for the years 1957, 1958 and 1959 a portion of the taxpayer's depreciation deduction was disallowed and for the years 1958 and 1959 travel and auto expense was disallowed as a deduction.

The taxpayer contested only the holding that salaries received by its members from Bond Street Jewel Case Corporation were subject to unincorporated business taxes.

The taxpayer is a manufacturer of ladies' jewelry cases. It employed between 75 and 100 persons. The three members of the taxpayer partnership each owned a one-third interest in the business. The partners were officers and the only stockholders of Bond Street Jewel Case Corporation. The corporation (each of the partners owning one-third of the outstanding shares) was formed because the sale of ladies' jewelry cases under the taxpayer's name was hindered by the use of that name. The corporation and the partnership business were both located at 550 Broadway, New York, New York. During the years in question the corporation sold only the merchandise manufactured by the taxpayer partnership. The corporation employed, in addition to its officers, three or four individuals and employed salesmen to sell merchandise on a commission basis.

It was alleged that the salaries paid to the officers of the corporation were for administrative duties. The treasurer of the corporation, one of the member partners, who also acted as a salesman for the corporation, was paid a lesser salary than the other officers. Salaries were determined by the value of their service and their importance to the corporation. Income and social security taxes were withheld from the salaries paid to the officers who were covered by unemployment insurance and workmen's compensation insurance.

Section 386 of the Tax Law provides that:

> "* * * It is not intended * * * that an individual shall be deemed so engaged [in an unincorporated business] with respect to compensation for services rendered by him as an employee, or as an officer of a corporation, * * * unless such compensation constitutes receipts of a business regularly carried on by such individual. * * *" (Emphasis supplied)

Section 703(b) of the Tax Law which was taken from Section 386 similarly provides that:

> "The performance of services by an individual as an employee or as an officer or director of a corporation, * * * shall not be deemed an unincorporated business, unless such services constitute part of a business regularly carried on by that individual." (Emphasis supplied)

The issue in this matter is not free from doubt. It does not appear that the payment of salaries by the corporation to its officers was a means of distributing profits of the partnership. It is my opinion that the salaries of the officers did not constitute receipts of the business regularly carried on by the partnership. The salary of William Bruce was less than the salaries of the other officers of the corporation although the interests of the partners and officers in the business were equal. This indicates that the business of the corporation was independent of the partnership. Furthermore, there was a legitimate business purpose in creating a separate entity which kept its own books, records and had different employees. It follows then that the promotion, sale and distribution of ladies' jewel cases constituted a business separate from the manufacture of them by the partnership. In any event, all the partners are deceased and there is therefore no clear testimony available to ascertain the interrelationship of the business operations.

For the reasons stated above, I recommend that the determinations of the State Tax Commission denying the taxpayer's applications for the years 1957 through 1959, except to the extent of cancelling the portion of the assessments which resulted from the inclusion of corporate salaries as partnership receipts and granting the taxpayer's petition for the year 1960 be substantially in the form submitted herewith. The proposed determinations reduce the assessments for the years 1957 through 1959 from $2,221.60 to $474.57 and cancels the tax deficiency for 1960 in the amount of $1,381.05.

/s/ FRANCIS V. DOW

HEARING OFFICER

FVD:mc
Encs.
March 14, 1968

4-1-68

STATE OF NEW YORK

STATE TAX COMMISSION

IN THE MATTER OF THE APPLICATIONS

OF

LIMRIK BROTHERS

FOR REVISION OR REFUND OF UNINCORPORATED BUSINESS TAXES UNDER ARTICLE 16-A OF THE TAX LAW FOR THE YEARS 1957, 1958 AND 1959

The taxpayer having filed applications for revision or refund of unincorporated business taxes under Article 16-A of the Tax Law for the years 1957, 1958 and 1959, 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 December 21, 1957 before Francis V. Dow, Hearing Officer of the Department of Taxation and Finance at which hearing the taxpayer was represented by Julius Hirschfield, C.P.A. and the record having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That the taxpayer filed unincorporated business tax returns for the years 1957, 1958 and 1959, in which it reported net income of $55,690.25, $67,369.92 and $60,909.18 for the respective years from its business of manufacturing ladies' jewelry cases.

(2) That assessments were issued against the taxpayer for the years 1957, 1958 and 1959 as follows:

Year	Date	Assessment No.	Tax
1957	March 26, 1962	NYA 93240	$ [illegible]
1958	March 26, 1962	NYA 93239	[illegible]
1959	July 27, 1962	NYA 93095	[illegible]

That the assessments were issued on the basis that salaries received by members of the taxpayer partnership from Bond Street Jewel Case Corporation were subject to unincorporated business tax, than an excessive portion of depreciation was disallowed and that travel and auto expenses were disallowed as unsubstantiated.

(3) That the taxpayer did not contest the disallowance of the excessive portion of depreciation or unsubstantiated travel and auto expenses for the years 1957, 1958 and 1959.

(4) That the taxpayer is a manufacturer of ladies' jewelry cases; that the taxpayer employed between 75 and 100 persons; that its place of business was located at 550 Broadway, New York, New York; that there were three members of the taxpayer partnership each of whom owned a one-third interest in the business.

(5) That Bond Street Jewel Case Corporation was formed by the members of the taxpayer partnership because the sale of ladies' jewelry cases under the taxpayer's name of Librik Brothers was hindered by the use of that name and was incorporated to sell the merchandise of the taxpayer partnership; that during the years in question the corporation sold only goods manufactured by the taxpayer partnership; that the outstanding shares in the corporation were owned by the members of the taxpayer partnership in the same percentage as their interest in the partnership; that such member partners were also the officers of the corporation; that the corporation operated its business also from 555 Broadway, New York, New York; that the corporation employed three or four other individuals in addition to its officers and also employed salesmen to sell its merchandise on a commission basis.

(6) That the members of Libsik Brothers acting as officers of Bond Street Jewel Case Corporation received salaries from the corporation as follows:

Year	Sol Libsik	Sam Libsik	William Green
1957	$ 6,625.00	$ 6,625.00	$[illegible],770.00
1958	5,200.00	5,200.00	[illegible]
1959	10,400.00	10,400.00	[illegible]

(7) That it was alleged that the salaries paid to the members of the taxpayer partnership were paid to them as officers of Bond Street Jewel Case Corporation for administrative duties and that the amount of the salaries paid to the members of the partnership by the corporation was determined by their value and importance to the corporation; that the treasurer of the corporation also acted as a salesman for it; that the treasurer received a lesser salary from the corporation than the other officers in each of the years 1957 through 1959.

(8) That income and social security taxes were withheld from the salaries paid to the partners as officers of the corporation; that the officers of the corporation were covered by unemployment and workmen's compensation insurance.

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

DETERMINES:

(A) That the activities of the partners for the corporation were not interrelated with the activities of the partners for the partnership; that the compensation paid to the member partners by the corporation did not constitute receipts of the unincorporated business regularly carried on by the taxpayer partnership and was not subject to the unincorporated business tax.

(5) That the excessive portion of depreciation and travel and auto expenses disallowed as unsubstantiated for the years 1957, 1958 and 1959 were properly disallowed since the taxpayer did not contest their disallowance.

(6) That, accordingly, the assessments for the years 1957, 1958 and 1959 (Assessment Nos. BPA 93549, BPA 93550 and BPA 93095, respectively) are recomputed as follows:

	1957	1958	1959
Depreciation Disallowed	$1,682.66	$4,560.12	$3,707.48
Disallowed Travel and Auto Expenses		790.00	1,500.00
Additional Allowance For Services	336.33		
Total Increase in Income	$1,345.33	$5,310.12	$5,207.48
Additional Unincorporated Business Tax at 4%	$ 53.85	$ 212.40	$ 208.30

(9) That by virtue of finding of (6) above, the assessment for 1957 (Assessment No. BPA 93549) is modified by reducing the additional unincorporated business tax by the sum of $691.16; that the 1957 additional unincorporated business tax in the amount of $53.85 is correct and that the assessment for 1958 (Assessment No. BPA 93550) is modified by reducing the additional unincorporated business tax by the sum of $551.80; that the 1958 additional unincorporated business tax in the modified amount of $212.40 is correct; that the assessment for 1959 (Assessment No. BPA 93095) is modified by reducing the additional unincorporated business tax by the sum of $1,173.18; that the 1959 additional unincorporated business tax in the modified amount of $208.30 is correct. that the assessments as modified do not include any tax or other charges which could not have been lawfully demanded; that the

taxpayer's application for revision or refund with respect to the assessments for 1957, 1958 and 1959 as modified be and the same are hereby denied.

DATED: Albany, New York this 19th day of April ,1968.

STATE TAX COMMISSION

/s/ JOSEPH H. MURPHY

[redacted]

Bruce Manley

[redacted]

/s/ SAMUEL E. LEPLER

[redacted]

STATE OF NEW YORK

STATE TAX COMMISSION

IN THE MATTER OF THE PETITION

OF

LIMRIX BROTHERS

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

The taxpayer 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, 80 Centre Street, New York, New York on December 21, 1967 before Francis V. Dow, Hearing Officer of the Department of Taxation and Finance at which hearing the taxpayer was represented by Julius Hirschfield, C.P.A., 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 it reported net income in the amount of $70,830.20 from its business of manufacturing ladies' jewelry cases.

(2) That a Notice of Deficiency and Statement of Audit Changes (File No. 2681) were issued on March 16, 1964 determining additional unincorporated business tax and interest due in the sum of $1,361.05 on the basis that salaries in the total amount of

$29,300.00 received by members of the partnership taxpayer from Bond Street Jewel Case Corporation are considered subject to the unincorporated business tax.

(3) That the taxpayer is a manufacturer of ladies' jewelry cases; that the taxpayer employed between 75 and 100 persons; that its place of business was located at 550 Broadway, New York, New York; that there were three members of the taxpayer partnership each of whom owned a one-third interest in the business.

(4) That Bond Street Jewel Case Corporation was formed by the members of the taxpayer partnership because the sale of ladies' jewelry cases under the taxpayer's name of Librik Brothers was hindered by the use of that name and was incorporated to sell the merchandise of the taxpayer partnership; that during the years in question the corporation sold only goods manufactured by the taxpayer partnership; that the outstanding shares in the corporation were owned by the members of the taxpayer partnership in the same percentage as their interest in the partnership; that each member partners were also the officers of the corporation; that the corporation operated its business also from 555 Broadway, New York, New York; that the corporation employed three or four other individuals in addition to its officers and also employed salesmen to sell its merchandise on a commission basis.

(5) That the members of Librik Brothers acting as officers of Bond Street Jewel Case Corporation received salaries from the corporation during 1960 as follows: Emil Librik, $20,400.00, Sam Librik, $10,400.00 and William Green, $8,500.00.

(6) That it was alleged that the salaries paid to the members of the taxpayer partnership were paid to them as officers of Bond

Street Jewel Shoe Corporation for administrative duties and that the amount of the salaries paid to the members of the partnership by the corporation was determined by their value and importance to the corporation; that the treasurer of the corporation also acted as a salesman for it; that the treasurer received a lesser salary from the corporation than the other officers during the year 1960.

(7) That income and social security taxes were withheld from the salaries paid to the partners as officers of the corporation; that the officers of the corporation were covered by unemployment and workmen's compensation insurance.

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

DETERMINES:

(A) That the activities of the partners for the corporation were not interrelated with the activities of the partners for the partnership; that the performance of services by the members of the partnership as officers of the corporation are not determined an unincorporated business; that, accordingly, the compensation paid to the members of the partnership by the corporation did not constitute receipts of the unincorporated business regularly carried on by the taxpayer partnership and was not subject to the unincorporated business tax.

(B) That, accordingly, the notice of deficiency and the statement of audit changes for the year 1960 (File No. 2681) for unincorporated business tax were improper and should be

cancelled and the same is hereby cancelled in full.

DATED: Albany, New York this 19th day of April , 1968.

STATE TAX COMMISSION

/s/ JOSEPH H. MURPHY

PRESIDENT

Bruce Manley

COMMISSIONER

Samuel J. Lefkowitz

COMMISSIONER