L 9 (2-67)

Unincorp. Bus. Tax
Determinations A-Z
Marine Surveyors and
Consultants

BUREAU OF LAW
MEMORANDUM

TO: Commissioners Murphy, Macduff and Conlon

FROM: Francis V. Dow, Hearing Officer

SUBJECT: In the Matter of the Application of Marine Surveyors & Consultants for Revision or Refund of Unincorporated Business Taxes under Article 16-A for the years 1956 and 1957

In the Matter of the Applications of Virgil G. Hall for Revision or Refund of Personal Income Taxes under Article 16 of the Tax Law for the years 1956 and 1957

See also
Income Tax
Determinations A-Z
Hall, Virgil G.
(9/27/67)

Hearings with reference to the above matters were scheduled before me for January 13, 1967 and June 20, 1967 at 80 Centre Street, New York, New York. The taxpayers defaulted in appearance on both occasions. The taxpayer, Virgil G. Hall is one of the partners of the taxpayer, Marine Surveyors & Consultants.

The taxpayer consented that its taxes could be determined and assessed at any time before April 15, 1963 for the taxable years ending December 31, 1956 and December 31, 1957. An assessment (Assessment No. AUPA 96809) was issued for the year 1956 against the taxpayer, Marine Surveyors & Consultants, on April 3, 1963 which assessed unincorporated business tax in the amount of $294.35 on the basis that the ratio of business income allocable to New York sources was 90% instead of 30% which the taxpayer allocated in its partnership return. An assessment (Assessment No. AUPA 96810) was issued for the year 1957 against the taxpayer on April 3, 1963 which assessed unincorporated business tax due in the amount of $209.46 on the basis that the ratio of business income allocable to New York sources was 90% instead of 30% as allocated by the taxpayer in its partnership return and claimed business expenses in the amount of $6,000.00 were disallowed as unsubstantiated or personal traveling expenses.

Applications for revision or refund of the assessments issued against the taxpayer, Marine Surveyors & Consultants, were filed timely on February 10, 1964. They were denied by letter dated April 20, 1964. On July 28, 1964, more than 90 days from the date of denial, the taxpayer filed a demand for a hearing on the applications.

An assessment (Assessment No. [illegible]) was issued year 1956 against the taxpayer, Virgil G. Hall, on April 15, 1960 which was recomputed by a letter mailed on March 26, 1962 reducing the tax assessed from $[illegible] to $[illegible]. The tax was reduced as a result of a field audit which disclosed that the taxpayer's distributable share of income allocable to New York sources from the partnership, Marine Surveyors & Consultants was in the amount of $[illegible] instead of $12,771.09, the amount upon which the original assessment was computed.

The taxpayer filed an application for revision or refund of the additional tax assessed for the year 1956 on April 9, 1964, more than one year from March 26, 1962, the date on which the assessment was recomputed. The taxpayer's application protested the imposition of unincorporated business tax assessed against the partnership, Marine Surveyors & Consultants, but did not contest the income tax assessed against him in the assessment issued for 1956.

The taxpayer consented that his taxes could be determined and assessed at any time on or before April 15, 1963 for the taxable year ended December 31, 1957.

An assessment (Assessment No. [illegible]) was issued for the year 1957 against the taxpayer, Virgil G. Hall, on April 3, 1963 assessing additional income tax due in the amount of $115.59 on the basis that the taxpayer's distributable share of partnership income from Marine Surveyors & Consultants was increased due to the disallowance of claimed business expenses of the partnership.

In his application for revision or refund of the tax imposed for 1957, the taxpayer objected only to the imposition of unincorporated business tax assessed against the said partnership. The taxpayer Virgil G. Hall's demand for a hearing on his application was filed on July 28, 1964, which is the same date as the filing of the demand for a hearing in behalf of Marine Surveyors & Consultants on its application. The taxpayers submitted no evidence to substantiate the disallowed business expenses nor to show that the expenses were ordinary and necessary expenses incurred by the partners on behalf of the partnership nor to show that allocation of business income from New York sources was less than 90%.

Section 374 of the Tax Law provides that an application for revision or refund must be filed within one year of a recomputation of tax and requires that upon denial of such an application, a demand for a hearing be filed by the taxpayer within 90 days after the date of mailing of such a denial. Since no demand for a hearing was filed within 90 days of the denial of the taxpayer Marine Surveyors & Consultants' applications for the years 1956 and 1957, there was no timely demand for a hearing. Since the application for revision or refund of the assessment issued against Virgil G. Hall was filed after the expiration of one year from the date of issue of the assessment for the year 1956, he did not file a timely application.

For the reasons stated above, I recommend that the determinations of the State Tax Commission dismissing the taxpayer Marine Surveyors & Consultants' applications for the years 1956 and 1957, and dismissing the taxpayer Virgil G. Hall's application for the year 1956 and denying Virgil G. Hall's application for the year 1957 be substantially in the form submitted herewith.

/s/ FRANCIS V. DOW
HEARING OFFICER

FVD:kam

September 7, 1967

9-13-67

STATE OF NEW YORK

STATE TAX COMMISSION

IN THE MATTER OF THE APPLICATIONS

OF

MARINE SURVEYORS & CONSULTANTS

FOR REVISION OR REFUND OF UNINCORPORATED BUSINESS TAXES UNDER ARTICLE 16-A OF THE TAX LAW FOR THE YEARS 1956 AND 1957

The taxpayer having filed applications for revision or refund of unincorporated business taxes under Article 16-A of the Tax Law for the years 1956 and 1957, and hearings having been scheduled in connection therewith at the office of the State Tax Commission, 80 Centre Street, New York, New York, for January 13, 1967 and June 20, 1967, before Francis X. Dow, Hearing Officer of the Department of Taxation and Finance, and the taxpayer having defaulted in appearance on both days scheduled for hearings and the matter having been reviewed and considered,

The State Tax Commission hereby finds:

(1) That the taxpayer filed a partnership return for the year 1956 in which it reported income of $33,084.32 and allocated 30% or $9,925.30 to New York sources; that the taxpayer filed a partnership return for the year 1957 in which it reported income of $19,393.45 and allocated 30% or $5,818.04 to New York sources; that the taxpayer consented that its taxes be determined and assessed at any time before April 15, 1969 for the taxable years ended December 31, 1956 and December 31, 1957.

(2) That an assessment for 1956 (Assessment No. AWA 98809) was issued on April 3, 1963, assessing unincorporated business tax due in the amount of $294.35 on the basis that the ratio of business income allocable to New York sources was 50% and that the partnership activities constituted the carrying on of an unincorporated business within the intent and meaning of Article 16-A of the Tax Law; that an assessment for 1957 (Assessment No. AWA 98810) was issued on April 3, 1963 assessing unincorporated business tax due in the amount of $209.40 on the basis that the ratio of business income allocable to New York sources was 50%; that the partnership activities constitute the carrying on of an unincorporated business within the intent and meaning of Article 16-A of the Tax Law and claimed business expenses in the amount of $4,000.00, were disallowed as unsubstantiated or not ordinary and necessary expenses incurred by the partners on behalf of the partnership.

(3) That the taxpayer's applications for revision or refund of said expenses were denied; that the taxpayer was notified by letter mailed April 20, 1964 of the denial of its application; that on July 28, 1964, more than 90 days from the date of the mailing of the denial, the taxpayer filed a demand for a hearing on its applications.

Based upon the foregoing findings, the State Tax Commission hereby

DETERMINES:

That the taxpayer failed to file a timely demand for a hearing as required by section 374 of the Tax Law; that accordingly the additional taxes assessed against the taxpayer for the calendar years 1956 and 1957 under Article 16-A of the Tax Law are correct and lawfully due and owing together with interest and other charges.

Dated: Albany, New York this 27th day of September , 196[illegible].

STATE TAX COMMISSION

/s/ JOSEPH H. MURPHY
PRESIDENT

/s/ JAMES R. MACDUFF
COMMISSIONER

/s/ WALTER MACLYN CONLON
COMMISSIONER