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Unincorp. Bus. Tax Determinations A-Z

BUREAU OF LAW

MEMORANDUM

Nad, Nathan

TO: Commissioners Murphy, Macduff and Conlon

FROM: Francis V. Dow, Hearing Officer

SUBJECT: In the Matter of the Applications of Nathan Nad for Revision or Refund of Unincorporated Business Taxes under Article 16-A of the Tax Law for the Years 1958 and 1959

A hearing with reference to the above matter was held before me at 80 Centre Street, New York, New York on March 6, 1967. The taxpayer did not appear, but his accountant who stated that he was familiar with the facts testified. The exhibits and evidence produced were as shown in the stenographic minutes submitted herewith.

An assessment was issued for the year 1958 on February 6, 1962 (Assessment No. BTF 255250) finding unincorporated business tax due in the amount of $310.55 and an assessment was issued for the year 1959 on January 29, 1962 (Assessment No. B 997422) finding unincorporated business tax due in the amount of $189.30. Both assessments were issued on the basis that the taxpayer's income received for services as an employee constituted a part of his income from a business regularly carried on by him.

The 1958 assessment was also based on the disallowance of $1,411.02 of business expenses deducted by the taxpayer in computing his net unincorporated business income as unsubstantiated in conformity with the Federal audit of his return and the further unsubstantiated sum of $200 for contributions also disallowed on the Federal audit.

The taxpayer filed unincorporated business tax returns for the years 1958 and 1959 in which he reported net business income as a furrier.

The taxpayer is engaged in the unincorporated business of manufacturing ladies Persian lamb coats. He acted as a cutter for his business which had approximately twelve employees.

The taxpayer was an employee and a 50% stockholder of Furs by Dana, Inc. which manufactures ladies mink garments. The taxpayer financed the corporation and performed limited services for it. The corporation was operated by the other 50% stockholder. The

taxpayer was paid a salary from the corporation from which social security and income taxes were deducted. The corporation had its own employees and numbered approximately twelve. It occupied a different section of the same factory premises occupied by the taxpayer's ladies Persian lamb coat business. Each business entity paid rent of its own to the landlord. The taxpayer's knowledge of the mink garment business is limited. Each business had its own equipment. Some customers were common to both businesses. Neither company employed any sales personnel. The taxpayer raised no issue with regard to the addition to his 1958 unincorporated business income of the deductions disallowed on the Federal audit of his 1958 return.

It is my opinion that the $200 deducted by the taxpayer on his income tax return which was disallowed on the Federal audit of the return should not have been added to his business income since he had not deducted contributions in computing his net unincorporated business income. It is also my opinion that Furs by Dunn, Inc. and the taxpayer's unincorporated business were not so interrelated that the salary from the corporation could be deemed to constitute receipts from the taxpayer's unincorporated business.

For the reasons stated above, I recommend that the determination of the Tax Commission partially cancelling the assessment for 1958 and cancelling the assessment for 1959 in the above matter be substantially in the form submitted herewith.

/s/ FRANCIS V. DOW
Hearing Officer

FVD:io
Enc. MS DH 5-8-67

April 28, 1967

STATE OF NEW YORK

STATE TAX COMMISSION

IN THE MATTER OF THE APPLICATIONS

OF

NATHAN WAD

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

The taxpayer having duly filed applications for revision or refund of unincorporated business taxes under Article 16-A of the Tax Law for the years 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 March 4, 1967 before Francis V. Dow, Hearing Officer of the Department of Taxation and Finance at which hearing the taxpayer's accountant appeared and testified 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 1958 and 1959 in which he reported income from his unincorporated business; that the taxpayer did not report income received as salary from Furs by Dana, Inc. in his unincorporated business tax return; that the taxpayer's salary from the corporation was in the amount of $9,000 in 1958 and $6,500 in 1959; that the Federal audit of the taxpayer's 1958 income tax return disallowed deductions in the amounts of $390 deducted for traveling

and entertainment expenses, $520 deducted for miscellaneous business promotion expenses, $501.02 deducted for automobile depreciation and $200 deducted for contributions as unsubstantiated.

(2) That a notice of assessment was issued on February 6, 1962 for the year 1958 (Assessment No. NY 25250) finding additional unincorporated business tax due in the amount of $210.55 on the basis that income received by the taxpayer from Furs by Dana, Inc. was subject to the unincorporated business tax since they constitute receipts from an unincorporated business regularly carried on by the taxpayer and that the amount of the deductions disallowed on the Federal audit of the taxpayer's income tax return was includible as income subject to unincorporated business tax; that a notice of assessment was issued on January 29, 1962 (Assessment No. B 997482) for the year 1959 finding additional unincorporated business tax due in the amount of $209.30 on the basis that the salary income received from Furs by Dana, Inc. constituted receipts of an unincorporated business regularly carried on by the taxpayer.

(3) That the taxpayer was an employee and owned 50% of the stock of Furs by Dana, Inc.; that the taxpayer financed the said corporation; that the taxpayer performed only limited services for the corporation; that the only other stockholder of the corporation operated the business which was engaged in the manufacture of ladies mink garments; that the corporation employed approximately twelve persons.

(4) That the taxpayer conducted an unincorporated business in which he manufactured ladies Persian lamb coats; that the taxpayer employed approximately twelve persons in his business; that he acted as the cutter for the business.

(5) That the corporation and the taxpayer's unincorporated business were conducted in different sections of the same factory; that neither enterprise employed salesmen; that each enterprise owned its own manufacturing equipment; that each enterprise paid rent on the space that it utilized.

(6) That deductions were withheld for social security and income taxes from the income received by the taxpayer from Furs by Dunn, Inc.

(7) That the taxpayer failed to offer any evidence to substantiate the expenses which he deducted for auto depreciation, travel and entertainment and miscellaneous expenses in the amount of $1,411.02 which he deducted in computing his net unincorporated business income during 1958; that taxpayer did not deduct any contributions in computing his net unincorporated business income.

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

DETERMINES:

(A) That the taxpayer's unincorporated business was not integrated with Furs by Dunn, Inc. and, accordingly, the salary income received by him from the corporation during the years 1958 and 1959 did not constitute receipts in a business regularly carried on by the taxpayer.

(B) That the taxpayer did not substantiate the sum of $1,411.02 deducted by him in computing his 1958 net unincorporated business tax since he did not submit any evidence with regard to the deductions disallowed; that the addition of the sum of $800 disallowed on the Federal audit of the taxpayer's 1958 return was improperly held to be subject to unincorporated business tax since the taxpayer took no deductions for contributions in computing

not unincorporated business income.

(C) That accordingly the additional tax assessed against the taxpayer for the year 1958 (Assessment No. [illegible]) is hereby reduced from $110.55 to $47.98 and the balance of such assessment in the amount of $62.57 is hereby cancelled; that to the extent that the assessment is herein modified the assessment is correct and hereby affirmed; that the taxpayer's application for revision or refund with respect thereto as modified be and the same is hereby denied.

(D) That the assessment for the year 1959 (Assessment No. B 997422) is incorrect; that the application for revision or refund is hereby granted and the assessment for the year 1959 is hereby cancelled and revoked.

Dated: Albany, New York this 17th day of May, 1967.

STATE TAX COMMISSION

/s/ JOSEPH H. MURPHY
President

/s/ JAMES R. MACDUFF
Commissioner

/s/ WALTER MACLYN CONLON
Commissioner