Unincorp. Bus. Tax Determin. A-Z
Port Chester Electrical Constr. Corp. & George McKee, Inc.

STATE OF NEW YORK

STATE TAX COMMISSION

See also;
Unincorp. Bus. Tax Determinations A-Z
Port Chester Electrical Constr. Corp., and Carroll-Ratner Corp. (memo of 1/12/67)

x-ref
Corp. Tax Determinations A-Z
(1) Port Henry Electrical Construction Corp.
(2) McKee, George H., Inc.

IN THE MATTER OF THE APPLICATION

OF

Port Chester Electrical Construction Corp. and George H. McKee, Inc., individually and as co-partners d/b/a the firm name and style of:

Joint Venture

PORT CHESTER ELECTRICAL CONSTRUCTION CORP., and GEORGE H. McKEE, Inc.

FOR REVISION OR REFUND OF UNINCORPORATED BUSINESS TAXES UNDER ARTICLE 16-A OF THE TAX LAW FOR THE YEAR 1957.

The taxpayer herein having filed an application for revision or refund of unincorporated business taxes under Article 16-A of the Tax Law for the year 1957 and a hearing having been held in connection therewith at the office of the State Tax Commission, 80 Centre Street, New York City, N.Y. on the 15th day of September, 1964 before Solomon Sies, Hearing Officer of the Department of Taxation and Finance, at which hearing the taxpayer was represented by Louis Wilk, Esq., 276 Fifth Avenue, New York, N.Y. and Alexander Aaron, C.P.A., appeared as witness, and the matter having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That at all of the times hereinafter mentioned Port Chester Electrical Construction Corp. and George H. McKee, Inc. were and still are domestic corporations organized under the laws of the State of New York and engaged in the electrical contracting business; that on or about April 11, 1956 Port Chester Electrical Construction Corp. entered into a joint venture with George H.

McKee, Inc. under an agreement in writing; that the aforementioned joint venturers also entered into a joint contract for the installation of the electrical work at the Washington Street Sub-Station, Mount Vernon, N.Y. for the Consolidated-Edison Company of New York, pursuant to an agreement with the aforementioned Consolidated-Edison Company under date of January 3, 1956; that the services rendered pursuant to the joint contract were rendered solely within the State of New York; that the activities of the joint venture constituted the carrying on of an unincorporated business pursuant to Article 16-A of the Tax Law.

(2) That the aforementioned joint venture elected to report its income for income tax purposes on a long term contract basis of accounting and reported its entire income for the year 1957, when the work was completed; that on the 1957 partnership return of the joint venture the distributive share of net income distributed to Port Chester Electrical Construction Corp. was $42,818.90 and the amount distributed to George E. McKee, Inc. was $35,033.64; that on its unincorporated business tax return for the year 1957 the joint venture herein claimed a 100% exemption in the above distributed amounts and reported no tax due for the year 1957.

(3) That Port Chester Electrical Construction Corp. during the year 1957 carried on business both within and without the State of New York; that on the franchise tax return filed in accordance with Article 9-A of the Tax Law by Port Chester Electrical Construction Corp. for the year 1957 a business allocation percentage of .629385% was claimed; that during the year 1957 George E. McKee, Inc. carried on business solely within the State of New York and did not claim any allocation on its franchise tax return filed under Article 9-A of the Tax Law.

(4) That on May 26, 1960 the Department of Taxation and Finance made an additional assessment (Assessment No. B 704987) for the year 1957 in the amount of $359.77 against the joint venture herein, correcting the exemption claimed pursuant to section 386-f of the Tax Law permitting an exemption for Port Chester Electrical Construction Corp. only to the extent of $26,949.74, which is .649995 of its distributive share from the joint venture net income, and allowed the exemption for George E. Nolan, Inc. of $35,933.64, the entire amount received by it from said joint venture; that, in addition, a statutory exemption of $5,000 was also allowed the joint venture.

(5) That the taxpayer joint venture contends that it is entitled to partner's salary credit allowance of $5,000 for each corporation, or a total salary credit allowance of $10,000.

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

DETERMINES:

(A) That in addition to the statutory exemption of $5000, the taxpayer joint venture was only entitled to exemptions of the amounts of the proportionate interest of its joint venturers in the joint venture net income as computed for unincorporated business tax purposes to the extent that such amounts are includible in the net income of such joint venturers allocable to this State under Article 9-A of the Tax Law in accordance with section 386(f) of the Tax Law and 20 NYCRR, section 285.1(b); that accordingly only the amounts of $26,940.74 and $35,933.64 were properly allowed as exemptions.

(B) That the salary credit allowance for partners' services cannot be permitted inasmuch as both the member partners of the joint venture are corporations, in accordance with section 386-e of the Tax Law and 20 NYCRR, section 285.2.

(6) That, accordingly, the assessment (Assessment No. B-[illegible]) for the year 1957 is correct; that said assessment does not include any tax or other charge which could not have been lawfully demanded and that the application for revision or refund filed by the joint venture with respect to said assessment be and the same is hereby denied.

DATED: Albany, New York on the 3rd day of March, 19[illegible]7.

STATE TAX COMMISSION

/s/ JOSEPH H. MURPHY

[illegible]

/s/ JAMES R. MACDUFF

[illegible]

/s/ WALTER MACLYN CONLON

[illegible]