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Unincorp. Bus. Tax Determin.
A-Z

BUREAU OF LAW

MEMORANDUM

Ringler, Sidney

TO: Commissioners Murphy, Manley & Lepler

FROM: Solomon Sies, Hearing Officer

SUBJECT: SIDNEY RINGLER

Petition For Redetermination of a Deficiency or for Refund of Unincorporated Business Taxes Under Article 23 of the Tax Law For the Year 1962.

A hearing was held in the above matter at the New York City Office on June 14, 1966.

The issue involved is whether or not salary income received by the taxpayer from a corporation in which he owned all of the stock was integrated with his business income in his sole proprietorship, so as to constitute additional business income subject to Unincorporated Business Tax.

The taxpayer is the president and sole stockholder of Sidney Ringler Fur Co., Inc., a domestic corporation, organized under the laws of the State of New York on December 28, 1945. This corporation is engaged in the manufacture of fur garments at 150 West 30th Street, New York, N. Y. The taxpayer received $32,000 as compensation from the corporation during the year 1962. The other officers of the corporation are Samuel Ringler, secretary and salesman, who received a salary of $200 a week, and Morris Hudes, treasurer and inside foreman, who received $185 a week plus 15% of the profits at the end of the year.

The taxpayer was individually engaged in the business of purchasing and selling fur skins since the early Forties. The individual proprietorship has no employees and sells the skins exclusively to the corporation. In addition, the wife, Bettye, was engaged in business under her own name, jobbing fur garments. The net income from that business for the year 1962 amounted to $5,378.66.

The net income from the taxpayer's sole proprietorship in the sale of fur skins to the corporation amounted to $35,023.16. The corporation paid the entire rent for the premises occupied by all three entities.

It is to be noted that the corporation was capitalized with $200,000; that the gross sales of the corporation for the year 1962 were $1,600,000 and the entire net income of the corporation for the year 1962 amounted to $54,701.07; that the earned surplus and undivided profits at the end of the taxable year amounted to $183,770.27. It appears that the activities of the individual proprietorship were in furtherance of the business of the corporation.

Income and social security taxes were withheld from the salary paid taxpayer as president of the corporation. The taxpayer was also covered by unemployment and workmen's compensation insurance.

In the Matter of Librik Brothers (Formal Hearing Determination d. 4/30/68) it was held that salaries received by members of a partnership from a corporation, of which they were the sole stockholders, were not subject to unincorporated business tax. In that case the partnership was engaged in the manufacture of ladies' jewelry cases and the corporation sold only the merchandise manufactured by the partnership. The corporation and partnership were both located at the same premises. (Copy of memorandum of Hearing Officer is attached.)

On the basis of the determination in the Librik matter, I am of the opinion that the tax deficiency for 1962 be cancelled.

For the reasons stated above, I recommend that the decision of the Tax Commission in the above matter be substantially in the form submitted herewith.

May 24, 1968

S.S./
6/20/68

Solomon Sies
Hearing Officer

STATE OF NEW YORK

STATE TAX COMMISSION

IN THE MATTER OF THE PETITION

OF

SIDNEY RINGLER

FOR A REDETERMINATION OF A DEFICIENCY OR FOR REFUND OF UNINCORPORATED BUSINESS TAXES UNDER ARTICLE 23 OF THE TAX LAW FOR THE YEAR 1962

The above-named taxpayer having filed a petition for redetermination of a deficiency or for refund of unincorporated business taxes under Article 23 of the Tax Law for the year 1962, and a hearing having been held in connection therewith at the office of the State Tax Commission at 80 Centre Street, New York, New York on the 14th day of June 1966 before Solomon Sies, Hearing Officer, Department of Taxation and Finance, at which hearing the taxpayer appeared and was represented by Jack C. Wilner, Esq. and Irving Zimmerman, C.P.A., and the matter having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That the taxpayers, Sidney and Bettye Ringler, filed a New York State Combined Income Tax Return for the year 1962; that the taxpayer, Sidney Ringler, also filed an unincorporated business tax return for said year; that on his personal income tax return the taxpayer, Sidney Ringler, reported wages in the amount of $32,000 received during said year from Sidney Ringler Fur Co., Inc.; that the afore-mentioned taxpayer reported net business income in the amount of $35,022.14; that on January 18, 1965, the Department of Taxation and Finance issued a statement of

audit changes for the year 1962 including the salary income reported by the afore-mentioned taxpayer as additional business income subject to unincorporated business tax and, accordingly, issued a notice of deficiency therefor in the amount of $1,413.83 together with interest on the ground that the salary income was integrated with the business income.

(2) That during the year 1962 and prior thereto, the taxpayer was engaged in business as sole proprietor under the name of Sidney Ringler Fur Co., Inc. at 150 West 30th Street, New York City, engaged in the purchase and sale of skins in either dressed or raw state; that said company had no employees; that the sole proprietorship sold the fur skins exclusively to Sidney Ringler Fur Co., Inc. at the market price.

(3) That during the year 1962 and prior thereto, the taxpayer was president and director of Sidney Ringler Fur Co., Inc., a domestic corporation, organized under the laws of the State of New York, engaged in the manufacture of fur garments made of fur from minks, sables, foxes, etc.; that the taxpayer owned 100% of the shares of the capital stock of said corporation; that said corporation transacted its business at the same premises as that of the sole proprietorship at 150 West 30th Street, New York City; that the rent of the entire premises was borne by the corporation; that separate books and records were maintained by each of the two entities involved herein; that none of the employees of the corporation rendered any service to the individual proprietorship.

(4) That the services rendered by the taxpayer to Sidney Ringler Fur Co., Inc. as president, for which he received a salary of $32,000 per annum, consisted of supervising and

administering the proper operation of the corporation's business production, management and financing; that the other officers and directors of the corporation were Samuel Ringler, Secretary, who received a salary of $200 per week plus 25% of the profits, and Morris Bains, Treasurer, who received a salary of $125 per week and 15% of the profits; that Samuel Ringler was Sales Manager; that Morris Bains was Shop Foreman or Plant Manager.

(F) That Sidney Ringler Fur Co., Inc. withheld Federal and State income and social security taxes from the salary paid to the taxpayer; that the corporation covered the taxpayer for unemployment insurance.

Based upon the foregoing findings and all the evidence presented herein,

The State Tax Commission hereby

DECIDES:

(A) That the salary income received by the taxpayer from Sidney Ringler Fur Co., Inc. during the year 1962 did not constitute receipts from a business regularly carried on by the taxpayer within the intent and meaning of Section 703 of the Tax Law.

(B) That the statement of audit changes and notice of deficiency made against the taxpayer for the year 1962 are incorrect; that the taxpayer's petition for redetermination of a deficiency or for refund of unincorporated business tax is hereby granted, and the notice of deficiency for the year 1962 be, and the same is hereby cancelled and revoked.

Dated: Albany, New York, on the 19th day of July 1966.

STATE TAX COMMISSION

/s/ JOSEPH H. MURPHY
PRESIDENT

/s/ A. BRUCE MANLEY
COMMISSIONER

/s/ SAMUEL E. LEPLER
[illegible]