

Unincorp. Bus. Tax
BUREAU OF LAW *Determination A-2*
MEMORANDUM *Rothschild, Kurt L.*

TO: Commissioners Murphy, Macduff and Conlon
FROM: Solomon Sles, Hearing Officer
SUBJECT: Kurt L. Rothschild, application for revision or refund of an assessment of unincorporated business taxes for the years 1956 and 1957

A hearing with reference to the above matter was held before me at 60 Centre Street, New York, N. Y., on June 5, 1964. The appearances and the evidence produced were as shown in the stenographic minutes and exhibits submitted herewith.

The issue involved herein is whether the activities of the taxpayer as a sales representative for several principals constituted the carrying on of an unincorporated business in accordance with section 386, Article 18-A of the Tax Law.

Although the taxpayer filed a timely application for revision or refund with respect to the assessment for the year 1957, no notice of denial was issued by the Income Tax Bureau with respect thereto. However, it was stipulated at the hearing that the application for revision or refund with respect to the assessment for the year 1957 be considered with the application for revision or refund for the year 1956.

On or about December 8, 1950, the taxpayer entered into a written agreement with Dofan Handbag Co., Inc. of New York City where he was to act as a traveling salesman in the Midwest on a commission basis only. Under the terms of the agreement, the taxpayer had a right to represent other lines in addition to that of Dofan Handbag Co., Inc., provided the same were noncompetitive. The agreement provided that the taxpayer was not to represent other manufacturers of handbags without the approval and consent of Dofan Handbag Co., Inc. The taxpayer was not to receive any salary or drawing account and would not be reimbursed for traveling expenses or for any other expenses of any kind whatsoever. Pursuant to said agreement, the taxpayer represented the principal, Dofan Handbag Co., Inc. and also four other manufacturers during the year 1956 and five other manufacturers of handbags during 1957. The taxpayer solicited simultaneously accounts for all of the principals whom he represented. He took approximately four trips a year to the Midwest, each trip lasting in duration from three to six weeks contacting department stores, chain stores, specialty stores

and luggage stores so that when he called upon a customer he would try to call them five or six different lines, if possible. The taxpayer, in addition thereto, would endeavor to call buyers in New York City the several lines that he was handling.

The taxpayer used part of his home in Plainview, New York, to conduct his business making long distance calls and maintaining records at home and deducted office rental of his home in the sum of \$600 for each of the years 1956 and 1957.

The taxpayer reported on Schedule A of his income tax returns for the years 1956 and 1957 gross commissions in the sum of \$35,366.91 and \$27,354.69, respectively, and itemized his business expenses in the sum of \$21,112.94 for 1956 and \$17,462.20 for the year 1957.

The taxpayer was not regarded by any of the principals he represented as an employee for payroll tax purposes since they did not deduct withholding or social security taxes from the commissions paid to him.

It is to be noted that the taxpayer filed unincorporated business taxes for 1954 and 1955, but the taxpayer claims that his accountant had told him that the law had been changed effective with the year 1956.

I am of the opinion that the taxpayer's activities as a manufacturer's representative for five handbag manufacturers in 1956 and six in 1957 and the maintenance of an office at home in connection with said activities did not constitute an employer-employee relationship but rather constituted that of an independent contractor carrying on an unincorporated business subject to unincorporated business income taxes within the intent and meaning of section 146, Article 16-A of the Tax Law.

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

February 17, 1967
SS:ken

Solomon Sies
Hearing Officer

/s/

MARTIN SCHAPIRO

Approved

/s/

SAUL HECKELMAN

Approved

STATE OF NEW YORK

STATE TAX COMMISSION

IN THE MATTER OF THE APPLICATION

OF

MURT L. ROTHENBILD

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

Murt L. Rothenbild, the taxpayer herein, having filed an application for revision or refund of unincorporated business tax under Article 16A of the Tax Law for the year 1956 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 the 30th day of June, 1964 before Solomon Dies, Hearing Officer of the Department of Taxation and Finance, the taxpayer having appeared personally and testified in connection therewith; the taxpayer having filed a personal income tax return for the year 1957 but not having filed an unincorporated business tax return for said year; an additional assessment of unincorporated business tax for the year 1957 having been made against the taxpayer by the Department of Taxation and Finance on April 2, 1962; the taxpayer having filed a timely application for revision or refund with respect thereto but no denial of said application for revision or refund having been made, it having been stipulated at the hearing that the application for revision or refund for the year 1957 be considered herein together with the application for revision or refund for the year 1956; and the record having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That on or about December 8, 1950, the taxpayer entered into a written agreement with Gofan Handbag Co., Inc. of New York City whereby he was to act as travelling salesman in the

Middle-west territory, including the following cities: Pittsburgh, Akron, Cleveland, Youngstown, Columbus, Dayton, Cincinnati, Indianapolis, Detroit, Chicago, St. Louis, Kansas City, Toledo, Lincoln, Des Moines, Omaha, Minneapolis, St. Paul, Milwaukee, on a commission basis only; that under the terms of the agreement, the taxpayer had a right to represent other lines in addition to that of Doran Handbag Co., Inc., provided the same was non-competitive; that the agreement provided that taxpayer was not to represent other manufacturers of handbags without the approval and consent of Doran Handbag Co., Inc.; that the taxpayer was not to receive any salary or drawing account and would not be reimbursed for traveling expenses or for any other expenses of any kind whatsoever.

(2) That pursuant to said agreement, the taxpayer represented the principal, Doran Handbag Co., Inc. and also four other manufacturers during the year 1956 and five other manufacturers of handbags during 1957; that the taxpayer solicited simultaneously accounts for all of the principals whom he represented; that he took approximately four trips a year to the Middle-West territory, each trip lasting in duration from three to six weeks contacting department stores, chain stores, specialty stores and luggage stores so that when he called upon a customer he would try to sell two five or six different lines if possible; that the taxpayer, in addition thereto, would endeavor to sell buyers in New York City the several lines that he was handling.

(3) That the taxpayer used part of his home in Plainview, New York, to conduct his business making long distance calls, maintaining records at home; that the taxpayer deducted office rental of his home in the sum of \$600.00 for each of the years 1956 and 1957.

(4) That the taxpayer filed personal income tax returns

for the years 1956 and 1957 and reported on Schedule A commissions earned from several manufacturers, \$35,366.91 in the year 1956 and \$27,336.09 in the year 1957; that the taxpayer did not file unincorporated business tax returns for said years; that the expenses incurred by the taxpayer in connection with his activities on behalf of several principals he represented were reported as follows:

	1957	1956
Travel & Auto Expenses	\$6,287.49	\$7,156.14
Rent	600.00	600.00
Entertainment	3,768.80	3,215.48
Sales Promotion	2,960.98	7,232.90
Telephone	1,249.58	765.94
Depreciation Auto	733.47	997.21
Miscellaneous Expenses	17.70	323.97
Bank Charges	60.70	44.70
Professional Services	700.00	740.00
Commissions	33.15	
Buses	15.00	15.00
Advertising Expenses	1,024.14	
Insurance	211.11	
TOTAL	\$17,682.20	\$21,112.94

(5) That the taxpayer was not regarded by any of the principals whom he represented as an employee for payroll tax purposes since they did not deduct withholding or social security taxes from the commissions paid to him.

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

DETERMINES:

(A) That the occupational activities of the taxpayer during the years 1956 and 1957 constituted that of an independent contractor subject to unincorporated business tax within the intent and meaning of Section 386 of the Tax Law and that said unincorporated business was carried on wholly within the State of New York; that the aforementioned activities of the taxpayer did

not constitute an employer-employee relationship with the several employers whom he represented.

(B) That, accordingly, the assessments are correct; that said assessments (Assessment Nos. B-5B-190 and AB-005197 for the years 1956 and 1957, respectively) do not include any tax or other charge which could not have been lawfully demanded and that said applications for revision or refund filed by the taxpayer with respect to the aforementioned assessments be and the same are hereby denied.

DATED: Albany, New York on the 15th day of June , 1967 .

STATE TAX COMMISSION

/s/

JOSEPH H. MURPHY

Commissioner

/s/

JAMES R. MACDUFF

Commissioner

/s/

WALTER MACLYN CONLON

Commissioner