

Unincorp. Bus. Tax Determin. A-Z
BUREAU OF LAW

MEMORANDUM

Spier, Albertina and
Joseph E.

TO: State Tax Commission

FROM: Vincent P. Molineaux, Hearing Officer

SUBJECT: JOSEPH E. AND ALBERTINA SPIER
Application for Revision or Refund
of Unincorporated Business Tax
Under Article 16-A of the Tax Law
for the Year 1957

A hearing on the above matter was held before me at 80 Centre Street, New York, New York on September 20, 1967.

The question at issue is whether a demand for hearing was filed within 90 days of the denial of the application for revision as required by Section 374 of the Tax Law.

Taxpayers filed a personal income tax return for the year 1957 on which the tax shown to be due was paid. No return was filed for unincorporated business tax under Article 16-A of the Tax Law.

Based upon taxpayer husband's occupation as a commercial free-lance artist, Assessment No. B721280 for the year 1957 was issued January 14, 1960 in the amount of \$799.54. The application for revision or refund on Form IT-113, dated January 25, 1960, was denied by a Tax Department letter of June 20, 1962. No demand for hearing was filed.

Similar applications for revision or refund had previously been filed for the years 1955 and 1956 and upon denial, timely demands for hearing were filed. Upon such demands conferences were held. After extended negotiations, the applications were withdrawn by a letter of January 8, 1965 based upon allowance of partial refunds for those years. Partial refunds were also granted for the years 1960 and 1961 for which timely applications were made and no denial letters were issued. The partial refunds were granted based upon an allowance for some professional, non-commercial art work. Taxpayers acknowledged that application for refund for 1959 was not timely filed. On the request of the taxpayers' attorney, the 1957 assessment was referred to the Law Bureau for hearing on the question of timeliness of demand for hearing.

No demand for hearing was filed with the Department, but taxpayers claim that this was due to confusion created in a large part by the Tax Department and refer to a Department letter of October 7, 1963.

The letter of October 7, 1963, which was more than a year after the denial, would have no effect on the failure of the taxpayers to file the demand for hearing for which provision is made in Section 374 of the Tax Law.

For the reasons stated above, I recommend that the determination of the State Tax Commission affirming the denial of the application for revision be substantially in the form submitted herewith.

/s/ V. P. MOLINEAUX
Hearing Officer

VPK:ac
Enc.

September 11, 1968

9-17/68



THE UNITED STATES OF AMERICA
DO hereby certify that the within and foregoing is a true and correct copy of the original as the same appears in the records of the Department of the Interior.

WITNESS my hand and the seal of the Department of the Interior at Washington, D.C., this 1st day of January, 1900.

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STATE OF NEW YORK

STATE TAX COMMISSION

IN THE MATTER OF THE APPLICATION

OF

JOSEPH E. AND ALBERTINA SPIN

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

The taxpayers having filed an application for revision or refund of unincorporated business tax under Article 16-A of the Tax Law for the year 1957, and a hearing having been held at the office of the State Tax Commission, 80 Centre Street, New York, New York on September 20, 1957 before Vincent P. Hollmann, Hearing Officer of the Department of Taxation and Finance, and the record having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That taxpayers filed a personal income tax return for the year 1957 on which the tax shown to be due was paid. No return was filed for unincorporated business tax under Article 16-A of the Tax Law.

(2) That based upon taxpayer husband's occupation as a commercial free-lance artist, (Assessment No. NYE1285) unincorporated business tax for the year 1957 was issued on January 14, 1958 in the amount of \$799.54.

(3) That application for revision or refund on Form IT-113 was filed by the taxpayer husband on January 23, 1958 and was denied by the Tax Department's letter of June 20, 1958.

(4) That no demand for a hearing was filed with the Department of Taxation and Finance within the 90 days authorized by Section 374 of the Tax Law.

