

Uninc. Bus Tax Determin.
**BUREAU OF LAW
MEMORANDUM**

A-2

Zekauskas, Ann

TO: Commissioners Murphy, Macduff and Conlon
FROM: Alfred Rubinstein, Hearing Officer
**SUBJECT: Ann Zekauskas - Application 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 entitled matter was scheduled before me on January 20, 1967 at 80 Centre Street, New York, New York. The taxpayer defaulted in appearance.

The issues involved whether salaried activities of the taxpayer as a "commercial food stylist" for multiple employers constituted receipts of her regular business.

The taxpayer filed resident personal income tax returns for 1958 and 1959, reporting for 1958 salaries of \$16,743 for services as a "home economist" rendered to three employers, and net income from her business as a "food stylist" of \$3,682.35 out of gross receipts of \$27,281.25; and reporting for 1959 salaries of \$17,244.86 for services as a "commercial food stylist" rendered to eight employers and net income from her business as a "commercial food stylist" of \$11,922.49 out of gross receipts of \$49,146.51. An unincorporated business tax of \$141.20 was computed for 1959.

On June 12, 1962 assessments were issued for 1958 (No. B-011340) and 1959 (No. B-011341) finding that taxpayer's salaries for those years were business income. The taxpayer filed applications for revision, contending that salaries paid to an employee cannot be deemed taxable as business income, and demanded a hearing.

Taxpayer's business activities consisted of preparation of food displays for television commercials, motion pictures and photographs for television and film studios and "other organizations desirous of obtaining such services" (see letter of taxpayer's representative, Murray Schiffman, dated June 27, 1961). Her salaried activities were described as "commercial food stylist" and her employers were advertising agencies, food companies and ABZ Associates, Inc., a company "in the home economy field", of which the taxpayer was "an official" (see undated letter of Dancer-Fitzgerald-Sample, Inc.). One food company paid her \$15,400 in 1958 and \$15,165 in 1959, reportedly as salary, although her services were performed for the advertising agency who employed her.

Section 386 of the Tax Law provides that a person is not deemed to be engaged in an unincorporated business with respect to compensation for services rendered as an employee unless such compensation constitutes receipts of a business regularly carried

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on by him. Taxpayer did regularly carry on a business as a "commercial food stylist", maintaining a regular place of business, and incurring expenses for rent, payroll and other usual business expenses as reported by her on her tax returns. Her salaried activities as a "commercial food stylist" were identical to her business activities and performed for the same, similar and related clientele. The only distinction between her salaried and business activities was mode of payment.

Accordingly, I am of the opinion that taxpayer's salaried activities were interconnected and interrelated with her business activities; that her salaried income constituted receipts of her regular business and that the assessments should be sustained.

The determination of the Tax Commission should be substantially in the form submitted herewith.

/s/

ALFRED RUBINSTEIN

Hearing Officer

AR:ca
Enc.

March 20, 1967

STATE OF NEW YORK

STATE TAX COMMISSION

.....
IN THE MATTER OF THE APPLICATION

OF

ANN SCHUCHMAN

**FOR REVISION OR REFUND OF UNINCORPORATED
BUSINESS TAX UNDER ARTICLE 14-A OF THE
TAX LAW FOR THE YEARS 1956 AND 1957**
.....

Ann Schuchman having filed an application for revision or refund of unincorporated business tax under Article 14-A of the Tax Law for the years 1956 and 1957 (Assessments E-011340 and E-011341) and a notice of hearing having been duly served by mail on the taxpayer on December 8, 1956 setting down a hearing for January 29, 1957 at 10:30 A.M. at 80 Centre Street, New York, New York before Alfred Rubinstein, Hearing Officer, of the State Tax Commission, and the taxpayer having defaulted in appearing, and a notice thereafter having been served on the taxpayer and her representative by registered mail, according them further opportunity to appear and be heard, and an official receipt of the United States Post Office having been received as proof of delivery of said notice, and the taxpayer not having responded thereto, and the matter having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That the taxpayer, Ann Schuchman, filed a resident personal income tax return for 1956 on which she reported \$16,743 in salaries and \$3,652.35 as business income; that the taxpayer filed a resident personal income tax return for 1957 on which she reported \$17,544.85 in salaries and \$11,922.49 as business income, and computed an unincorporated business tax of \$141.80.

(2) That by notice of assessment No. 2-011340 dated June 12, 1962 the Income Tax Bureau computed an unincorporated business tax due for 1958 in the sum of \$418.61 on finding that taxpayer's salaries of \$16,743 received by her that year constituted business income; that by notice of assessment No. 2-011341 dated June 12, 1962 the Income Tax Bureau computed additional unincorporated business tax due for 1959 in the sum of \$930.49 on a finding that taxpayer's salaries of \$17,844.86 received by her that year constituted business income.

(3) That during the years 1958 and 1959 taxpayer's salaries were paid to her by food companies and advertising agencies for services as a "commercial food stylist" consisting of preparation of food displays for television commercials, motion pictures and photographs; that during 1958 and 1959, taxpayer's business income was received by her for identical services as a "commercial food stylist" rendered to a similar clientele consisting of food companies and advertising agencies.

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

DETERMINES:

(A) That during 1958 and 1959 the taxpayer regularly carried on and conducted a business as a "commercial food stylist"; that during such years the taxpayer's salaried activities as a "commercial food stylist" were interconnected and interrelated with similar business activities; and that taxpayer's compensation for services rendered as an employee during 1958 and 1959 constituted receipts of the business regularly carried on by her.

(B) That for 1958 the taxpayer's business income was \$20,423.35 and that for 1959 the taxpayer's business income was \$29,167.35.

(8) That accordingly, the notices of assessment imposing an unincorporated business tax upon the taxpayer for 1956 in the sum of \$418.61 and imposing additional unincorporated business taxes upon the taxpayer for 1959 in the sum of \$398.49 are correct; that the amounts set forth therein are due and owing together with interest, if any, and other statutory charges; that said notices of assessment do not include any tax or other charges which could not have been lawfully demanded and that the taxpayer's applications for revision or refund with respect thereto be and the same are hereby denied.

DATED: Albany, New York this 12th day of April, 1967.

STATE TAX COMMISSION

/s/

JOSEPH H. MURPHY

~~President~~

~~Commissioner~~

/s/

WALTER MACLYN CONLON

~~Commissioner~~