

STATE OF NEW YORK
STATE TAX COMMISSION

RE: U B T
TAX ART. 16-A SECS. 386
KEY WORDS Salesman -
close supervision
CROSS REFS. _____
CASE LAW CITATIONS _____
REMARKS _____

IN THE MATTER OF THE APPLICATIONS
OF
SEYMOUR I. LUBIN
FOR REVISION OR REFUND OF UNINCORPORATED BUSINESS TAX UNDER ARTICLE 16-A OF THE TAX LAW FOR THE YEARS 1955, 1956, 1957, 1958 AND 1959

Seymour I. Lubin, the taxpayer herein, having filed applications for revision or refund of unincorporated business tax under Article 16-A of the Tax Law for the years 1955, 1956, 1957, 1958 and 1959, and a hearing having been held at the office of the State Tax Commission at 184 Court Street, Binghamton, New York on the 7th day of October, 1966, before Vincent P. Molineaux, 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 during the years in question the taxpayer represented five companies, one of which was a subsidiary of one of the two principal firms which he represented.
- (2) That taxpayer's entire income is from commissions.
- (3) That none of the firms he represents withhold State or Federal income tax or social security contributions, nor is he reimbursed for travel, meals, telephone, stationery or other business expenses which amount to approximately 50% of his gross income. He is not permitted to represent other lines without permission of his two major companies. When he wishes to take major time off, such as a vacation, he must be cleared by both factories.
- (4) That taxpayer has no office or showroom of his own and is not permitted to employ an assistant.
- (5) That taxpayer spends most of his time on the road, sends in his orders en route and attends the showrooms maintained

by either of his two principal firms and is required to be present at the furniture shows which are held at various locations about seven times a year for about one week each.

(6) That during the shows taxpayer is required to spend about 50% of his time at the display of each of his two principals.

(7) That taxpayer's stationery carries only his own name as manufacturer's representative but that he writes up orders on firm forms or on his own forms.

(8) That taxpayer has no written contract with any of the firms which he represents.

(9) That taxpayer receives commissions on all sales in his territory whether written by himself or by someone else and that at shows he may write orders for customers outside his territory for which he receives no commission.

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

DETERMINES:

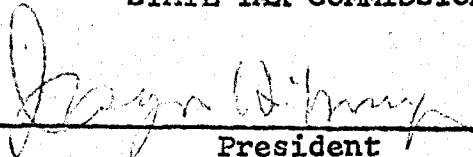
(A) That taxpayer was not, during the years in question, carrying on a business within the meaning of section 386 of the Tax Law.


(B) That taxpayer's income for the years 1955, 1956, 1957, 1958 and 1959 was not subject to unincorporated business tax.

(C) That the assessments AB 033488, AB 033489, AB 033490, AB 012349 and AB 033491 are incorrect and are cancelled in full.

Dated: Albany, New York this 14th day of May, 196⁹.

STATE TAX COMMISSION


President


Commissioner


Commissioner

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Seymour I. Lubin, the taxpayer herein, having filed applications for revision or refund of unincorporated business tax under Article 16-A of the Tax Law for the years 1955, 1956, 1957, 1958 and 1959, and a hearing having been held at the office of the State Tax Commission at 184 Court Street, Binghamton, New York on the 7th day of October, 1966, before Vincent F. Malinowski, 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 during the years in question the taxpayer represented five companies, one of which was a subsidiary of one of the two principal firms which he represented.

(2) That taxpayer's entire income is from commissions.

(3) That none of the firms he represents withheld State or Federal income tax or social security contributions, nor is he reimbursed for travel, meals, telephone, stationery or other business expenses which amount to approximately 50% of his gross income. He is not permitted to represent other lines without permission of his two major companies. When he wishes to take major time off, such as a vacation, he must be cleared by both factories.

(4) That taxpayer has no office or showroom of his own and is not permitted to employ an assistant.

(5) That taxpayer spends most of his time on the road, sends in his orders en route and attends the showrooms maintained

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(8) That taxpayer has no written contract with any of the firms which he represents.

(9) That taxpayer receives commissions on all sales in his territory whether written by himself or by someone else and that at shows he may write orders for customers outside his territory for which he receives no commission.

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

DETERMINES:

(A) That taxpayer was not, during the years in question, carrying on a business within the meaning of section 306 of the Tax Law.

(B) That taxpayer's income for the years 1955, 1956, 1957, 1958 and 1959 was not subject to unincorporated business tax.

(C) That the assessments AB 033488, AB 033489, AB 033490, AB 012349 and AB 033491 are incorrect and are cancelled in full.

Dated: Albany, New York this 14th day of May 9, 1965.

STATE TAX COMMISSION

/S/

JOSEPH H. MURPHY

President

Bruce H. Murphy
Commissioner

Milton Kohn
Charles L. Kohn