

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Applications  
of

LEO P. MIRSKY

For Revision or Refund of Unincorporated  
Business Taxes Under Article 16-A of the  
Tax Law for the Years 1954 and 1955

The taxpayer, having filed (with his wife) applications pursuant to Sections 386 j and 374 of the Tax Law for revision of notices of additional assessment dated March 28, 1961, for unincorporated business taxes imposed by Article 16-A of the Tax Law for the years 1954 and 1955, and such applications having been denied and hearings thereon demanded and duly held before Nigel G. Wright, Hearing Officer, and the record having been duly examined and considered,

The State Tax Commission hereby

FINDS:

(1) The issues in this case are whether the taxpayer is exempt from the unincorporated business tax by reason of being an employee rather than an independent contractor and whether the taxpayer is precluded from claiming such exemption by reason of an adverse determination of the State Tax Commission with respect to this taxpayer for different taxable years.

(2) The assessments were against Leo P. Mirsky alone and in the amount of \$1026.92 for 1954 and \$1065.07 for 1955.

(3) The taxpayer is now deceased. He was a soliciting life insurance agent for New England Mutual Life Insurance Co.

*File*  
HEARING UNIT - File Copy  
TAX \_\_\_\_\_  
ART. 16-A SECS. 386 j *43T*  
KEY WORDS \_\_\_\_\_  
CROSS REFS. \_\_\_\_\_  
CASE LAW CITATIONS \_\_\_\_\_  
REMARKS  
DETERMINATION

(5) The only testimony herein on behalf of taxpayer was by his accountant who had also represented him at the hearing with respect to the August 25, 1965 determination. The accountant did not testify as to his personal knowledge. He was unable to state that the facts here involved were any different than those developed at the previous hearing.

DETERMINE:

guided by its past determinations.

that he is an employee and exempt from the tax.

thereof are hereby denied.

19 70.

PRESIDENT

COMMISSIONER