

HEARING UNIT - File Copy

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1. *Journal of the American Medical Association*, 1997; 277: 1001-1005.

$\frac{1}{2} \times \frac{1}{2} = \frac{1}{4}$

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### CALC DETERMINATION

REMARKS

The State Tax Commission hereby

1. The notice's of additional assessment increases the income of each year for the taxpayer's unincorporated business under the authority of Regulations 20 NYC RR 281.3 by amounts received as salaries by each of the taxpayers from a corporation, Samalot-Romero Real Estate Inc. In addition increases in income are made, but are not contested by the taxpayer, for the year 1956 because of certain gains on the sale of real property and for the years 1958 and 1959 by reason of the income of "T.R. Realty Co." being considered a receipt of the unincorporated business and by increasing the income of such "T.R. Realty" for accelerated depreciation not allowable.

The amounts included in the computation are not in issue.

2. The taxpayer's unincorporated business is a partnership doing business as Samalot and Romero. It was formed on September 17, 1956 and is engaged in the business of buying, repairing, managing and selling real estate at its own risk and for its own account for profit.

3. During the taxable year, each of the taxpayers was an officer and 50% stockholder of Samalot-Romero Real Estate, Inc., formed on March 24, 1956, a date which preceded the formation of the unincorporated business. The business of the corporation was a continuation of the business of the sole proprietorship of Mr. Samalot who had employed Mr. Romero as a salesman. The corporation engaged solely in the business of real estate brokerage: the sale of real estate as agent for others and on their behalf for commission income. Both taxpayers are individually licensed as real estate brokers.

4. The business of the partnership and of the corporation is conducted at the same business office and address: 1014 East 163rd Street, Bronx, New York. A customer at the place of business was always told or already knew whether he was dealing with the taxpayers as principals of the partnership or as officers of the corporate broker.

5. About 75% of the sales of the partnership were made through the use of the corporation as broker.

6. The duties of the taxpayers for the corporation were primarily to supervise salesmen.

7. Although the corporation acted as broker for the partnership over 80% of the commissions earned by the corporation were from sales made of property not owned by the partnership.

Based on the foregoing findings, the State Tax Commission hereby

DETERMINES:

A. The salaries received from the corporate real estate broker are for duties which are not related to the business conducted by the taxpayers in the unincorporated business as a real estate dealer. (See Alan Gittleson 1968-1 N.Y.S. Tax Bull. 31).

B. The notice of additional assessment dated February 26, 1963 for the year 1957 is erroneous in its entirety and such assessment is hereby cancelled in full. The notices of additional assessment dated February 26, 1963 for the years 1956, 1958 and 1959 are erroneous in part and are hereby redetermined to be as follows: 1956, \$59.77; 1958, \$22.03; 1959, \$23.22. As redetermined such assessments for the years 1956, 1958 and 1959 do not include taxes or other charges which could not have been lawfully demanded and the same are affirmed together with such interest and other charges, if any, as shall be lawfully due pursuant to Tax Law Sections 376 and 377.

DATED, Albany, New York this

11<sup>th</sup> day of February, 1970.

STATE TAX COMMISSION

*Norman Gelman*

COMMISSIONER

*Bruce Mauley*

COMMISSIONER

*Milton Korman*

COMMISSIONER