

TAX Unincorporated Business TaxART. 16A SECS. 386KEY WORDS Employer of
Short Hand Reporters -
Subject to U.B.T.

STATE OF NEW YORK

STATE TAX COMMISSION

CROSS REFS. _____

IN THE MATTER OF THE APPLICATION OF :

HARRY UNGARSOHN :

FOR REFUND OF UNINCORPORATED BUSINESS TAXES :
UNDER ARTICLE 16-A OF THE TAX LAW FOR THE :
YEAR 1957 :

CASE LAW CITATIONS _____

REMARKS _____

Harry Ungarsohn having duly filed an Application for Refund of unincorporated business taxes paid under Article 16-A of the Tax Law for the calendar year 1957, and a hearing having been held in connection therewith, and the matter having been duly examined and considered, the State Tax Commission hereby finds:

(1) That the taxpayer filed a return of income and paid taxes of \$394.97 under Article 16-A of the Tax Law for the calendar year 1957; that he reported thereon total receipts, various types of expenses and net income from his activities therein designated as "Stenotype Reporting"; that the business address of the taxpayer was listed thereon as 145 Nassau Street, New York, N. Y., and that insofar as herein pertinent the income and deductions so reported by the taxpayer were, as follows:

Total receipts	\$64,385.46
----------------	-------------

Cost of services and expenses:

Reporting and transcribing	\$25,977.54
Rent - New York City office	1,859.00
Telephone, Tel. answering service	2,750.07
All other expenses and allowable deductions	<u>13,770.15</u>
Total deductions	<u>44,356.76</u>
Net profit from services	\$20,028.70

(2) That subsequent to the filing of such return and within the time prescribed by the provisions of Section 374 of the Tax Law, the taxpayer filed an Application for Refund of unincorporated business

taxes paid as aforesaid, the application being based on the grounds that more than 80% of the gross income received from his professional activities as a certified shorthand reporter was derived from personal services actually rendered by him, without the use of capital as a material income-producing factor.

(3) That on informal review of such application and following a preliminary hearing in the matter the Income Tax Bureau held that the taxpayer did not guide and direct the work procedure of the reporters and transcribers but was selling the services of shorthand and stenotype reporters, who in turn supervised and approved the work of free lance typists so that the efforts of such assistants could not be ascribed to the taxpayer; that in view of such circumstances the Income Tax Bureau held that more than 80% of his income was not derived from personal services actually rendered by him, as required by the provisions of Section 386 in the case of all professions other than the four professions specifically exempted by such section; so that the application was denied by the Income Tax Bureau on the grounds that his income was subject to the unincorporated business tax.

(4) That the record shows that on February 11, 1944, the New York State Education Department issued a certificate as Certified Shorthand Reporter to the taxpayer; that thereafter, including the year here in question, the taxpayer continued to be so certified; that the taxpayer maintained a regular office in New York City, as aforesaid, from which he carried on his activities in 1957 as an independent reporter; that in addition the taxpayer maintained telephone answering services during such year at various locations without the state of New York at which there were received on his behalf written and telephone communications from clients and prospective clients; that on the basis of the record (see pages 15-20, inclusive, of the stenographic minutes of the January 6, 1964 hearing session), it is hereby found that 16 2/3% of the income of the taxpayer from his activities in 1957 was derived from sources without New York State.

(5) That during the year 1957, the taxpayer himself devoted his full time actually reporting various engagements within and without the state of New York; that during such year he hired outside free lance reporters to do the reporting at other concurrently scheduled engagements, at which other engagements the taxpayer himself could not be, and was not, present.

(6) That an undisclosed number of the outside assistant reporters so used by the taxpayer were licensed by the New York State Education Department as Certified Shorthand Reporters and the balance thereof were not so certified; that the transcribing of each such reporting was done by outside typists at the direction of the respective reporter except that in some instances the outside reporters themselves did at least some of the transcription of their own reporting; that the taxpayer paid the total sum of \$25,977.54 to such outside reporters and transcribers for such services; that the taxpayer was unable to state what portion of such amount was paid to reporters and what portion was paid to transcribers as he stated that his records were such as to make it almost impossible to compile such information; that the taxpayer refused to make an approximation of the respective amounts so paid; that when he was asked whether approximately one-third of the \$25,977.54 was paid to transcribers he refused to agree to any approximation; that it is hereby found that one-third of such amount; namely, \$8,659.18 was paid to transcribers and that the balance thereof; namely, \$17,318.36 was paid to outside reporters, which amount of \$17,318.36 paid to outside reporters is substantially in excess of 20% of the total income of \$64,385.46 (namely, \$12,877.09) realized by the taxpayer from his activities for 1957.

(7) That in view of the very nature and character of the stenotype and shorthand reporting service and because of the nonappearance of the taxpayer on the occasions when his outside reporters were rendering their services on his behalf (thus precluding the taxpayer himself from making any simultaneous reporting for control purposes), it is hereby found that

the taxpayer did not exercise sufficient supervision and control over such reporters as to attribute the efforts thereof to the personal reporting services actually rendered by the taxpayer himself.

(8) That in carrying on his activities as above described during the year 1957 the use of capital was not a material income-producing factor.

Upon the foregoing findings and all the facts and evidence presented herein, the State Tax Commission hereby

DETERMINES:

(A) That the taxpayer's activities as above described constitute the carrying on of a taxable unincorporated business, even though the taxpayer during such year was duly licensed by New York State as a certified shorthand reporter, as it was not shown that more than 80% of his income during 1957 (Finding No. (6) above) was derived from the personal services actually rendered by him in the practice of certified shorthand reporting (Finding No. (7) above).

(B) That 16 2/3% of the taxpayer's income from his activities during 1957 was derived from sources without the state of New York (Finding No. (4) above), so that pursuant to the provisions of Section 386-g of the Tax Law the taxpayer's liability under Article 16-A of the Tax Law for 1957 should be abated by the amount of \$104.99 from the amount computed and stated on the original return of \$394.97 to the restated amount of \$289.98 and that the taxpayer is entitled to a refund of the amount of such abatement of \$104.99 and IT IS SO ORDERED.

Dated: Albany, N. Y.,

July 25,

1969

THE STATE TAX COMMISSION

Roman Galbraith
Commissioner

Abner Moulton
Commissioner

Milton Kanner
Commissioner