

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Application  
of

A. JONAS BERG

For Revision or Refund of Unincorporated  
Business Income Taxes under Article 16-A  
of the Tax Law for the Year 1949

TAX 2 BT 386  
ART. 16A 386 j  
KEY WORDS L. Report 374  
"Business... Indemnity  
etc." not so considered as  
CROSS REF. employee  
or independent  
contractor, given  
CASE LAW CITATIONS agency  
insurance company  
is employee.  
REMARKS  
DETERMINATION appears  
undisturbed  
of income  
held in  
case  
same date

A. Jonas Berg, the taxpayer herein, having filed an appli-  
cation for revision or refund of Unincorporated Business Income  
Taxes assessed under Article 16-A of the Tax Law for the year  
1949 and a hearing having been held in connection therewith at  
the office of the State Tax Commission, Gov. Alfred E. Smith  
State Office Building, Albany, New York, on September 18, 1956  
before Samuel Michelson, Senior Tax Administrative Supervisor,  
Income Tax Bureau, Department of Taxation and Finance, at which  
hearing the taxpayer appeared personally together with his repre-  
sentatives, Mr. Joseph E. Kahn, Certified Public Accountant, and  
Mr. Russell E. Newkirk, Esq., of counsel, and the facts and the  
record having been duly examined and considered, the State Tax  
Commission hereby

DETERMINES:

(A) That the income of the taxpayer during 1949 from his  
activities as a general agent of the Security Mutual Life Insurance  
Company was received by him as an employee of Security and as such  
was exempt from Unincorporated Business Tax liability under Article  
16-A of the Tax Law.

(B) That in computing net income on his return filed under  
Article 16-A of the Tax Law for the year 1949, the taxpayer, as it

is found, deducted against his income as an independent insurance broker, which was subject to unincorporated business tax, various expenses which, to the extent that they were in fact incurred, were related to sales made for Security Mutual Life Insurance Company, his employer, which were not subject to the unincorporated business tax as determined under Paragraph (a) above; such total expenses together with the respective percentages thereof applicable to income not subject to UBT tax and therefore not allowable on said return and the dollar amounts of claimed expenses so disallowed were as follows:

	<u>TOTAL EXPENSES</u>	<u>PERCENTAGE OF EXPENSES NOT APPLICABLE TO INCOME SUB- JECT TO UBT; DISALLOWED</u>	<u>DOLLAR AMOUNTS OF CLAIMED EXPENSES DISALLOWED</u>
Sub-commissions	\$3941.96	60%	\$2,400.00
Clerical payroll	5328.84	75%	4,000.00
Office expenses	3225.39	90%	2,892.85
Entertainment and pro- motional expenses	1420.77	90%	1,278.69
Traveling and automobile expenses	3282.52	90%	2,954.27
Total expenses applicable to excluded income			<u>13,525.81</u>
Less expenses reimbursed			<u>7,537.62</u>
Unreimbursed expenses applicable to excluded income but claimed as deductions in computing taxable income			\$ 5,988.19

(C) That the unincorporated business tax liability of the taxpayer under Article 16-A of the Tax Law for the year 1949 is restated as follows:

1949

Total income from unincorporated business before contributions, as reported.....	\$6,506.81
Add: Claimed expenses disallowed.....	5,988.19
	12,495.00
Less Contributions.....	<u>61.60</u>
	\$ 12,433.40

20% Service Credit; 80%.....	\$ 9,946.72
Less, in lieu of salary.....	<u>5,000.00</u>
Taxable income subject to UBT.....	\$ 4,946.72
Unincorporated business tax at 3%.....	148.40
Less payment.....	<u>4.69</u>
Net additional tax due, as restated.....	\$ 143.71

(D) That the additional taxes as now restated in the amount of \$143.71 are correct and represent taxes legally due and owing.

This stated amount of additional tax due is subject to interest which is fixed (pursuant to provisions of Tax Law §379.2 and 377.3) at the reduced rate of 6% per annum from June 13, 1951, the date of the original additional assessments to the date of payment, provided that payment is made not later than thirty days after the date of mailing of notice of the Determination herein; but if not then paid, the said amount of additional tax due is subject instead to 6% interest from June 13, 1951 to the date of mailing of notice of this Determination, and to a penalty of 5% on this said amount of additional tax due, and to further interest at the rate of 1% per month on the said amount from the said date of mailing of notice of this Determination until the date of payment.

Dated, Albany, New York

October 23 , 1969.

STATE TAX COMMISSION

Korman Gallivan

PRESIDENT

Bruce Masley

COMMISSIONER

Milton Kremer

COMMISSIONER