

U.B.T. Determination
Ungarsohn, Harry **A-2**

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
HARRY UNGARSOHN	:	Affidavit of Mailing
	:	of Notice of Decision,
	:	by Registered Mail
For a Redetermination of a Deficiency	:	
or a Refund of Unincorporated Business:	:	
Taxes under Article(s) 16-a of the Tax	:	
Law for the year(s) 1957	:	

State of New York
County of Albany

LYNN HORODOWICH, being duly sworn, deposes and says, that she is an employee of the Department of Taxation and Finance, and that on the 31st day of July, 1969, she served the within Notice of Decision (or of "Determination") by registered mail upon Harry Ungarsohn

the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Harry Ungarsohn, 145 Nassau Street, New York 38 New York and by delivering the same at Room 214a, Building 8, Campus, Albany, marked "REGISTERED MAIL" to a messenger of the Mail Room, Building 9, Campus, Albany, to be mailed by registered mail.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

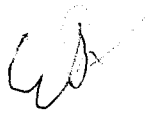
Sworn to before me this
31st day of July, 1969.

Lawrence S. Newman
hearing officer

Lynn M. Horodowich

To State Tax Commission

Signatures needed on two copies of
this determination.

A handwritten signature in dark ink, appearing to be 'ER' or 'E. R.', with a stylized flourish at the end.

From Edward Rook

DEPARTMENT OF TAXATION AND FINANCE

A-Z

MEMORANDUM

Ungarsohn, Harry

TO: Mr. Edward Rook
FROM: Mr. Lawrence A. Newman
SUBJECT: Harry Ungarsohn-Article 16A-1957
Hearing and Report by L. Gifford in 1963.

DATE June 25, 1969
OFFICE Hearing Unit

The proposed determination was reviewed by E. Igoe, A. Johnson, and J. Donovan. A final approval, dated 2/5/65 by F. Kellher, is unsigned.


Mr. Moon, of Mr. S. Knee's Unit, advised me that action on the years 1958 through 1967 are being held up until the year 1957 is resolved. The taxpayer is listed in the current Manhattan telephone directory at 150 Nassau Street.

The taxpayer is a certified shorthand reporter operating mostly within the State of New York under the name, "Stenotype Reporting," employing other certified shorthand reporters and transcribers.

The opinion holds the taxpayer subject to the Unincorporated Business Tax because more than 20% of his income is derived from the activities of a free lance reporters hired by the taxpayer, but allows an allocation of income for work done outside the State.

The taxpayer paid \$394.97 with the original return, and claimed a refund of the entire amount. The determination allows his claim in part as a result of the allocation of out-of-state income. A credit of \$104.99 results.

I recommend approval of this determination.


LAWRENCE A. NEWMAN
Hearing Officer

LAN:pw

BUREAU OF LAW

MEMORANDUM

TO: Commissioners Murphy, Palestin and Macduff
FROM: Francis Kelliher
SUBJECT: HARRY UNGARSOHN

Article 16-A of the Tax Law
for the Year 1957

Two issues raised herein are (1) whether the income of the taxpayer, a certified shorthand reporter, is subject to unincorporated business taxes where more than 20% of such income is derived from the activities of free-lance reporters hired by the taxpayer, and (2) whether or not the taxpayer is entitled to an allocation of income to work done outside of the State of New York where such income was derived from reporting done outside the State.

The facts herein are set forth in the memorandum from the hearing officer to the Director of the Income Tax Bureau who has concurred in the hearing officer's opinion that the taxpayer's activities are subject to unincorporated business tax where more than 20% of such income is derived from the services of free-lance reporters, but that such income should be allocated within and without the State of New York. I also concur in such opinion and am approving the hearing officer's proposed determination sustaining the assessment after modification of the same to exclude the imposition of unincorporated business taxes on out-of-state income.

If you agree, kindly sign the proposed determination and return the same together with the entire file to the Law Bureau for further processing.

Assistant Director

MS:ca
Enc.

February 5, 1965

STATE OF NEW YORK
STATE TAX COMMISSION

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

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
<u>Cost of services and expenses:</u>	
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


Commissioner


Commissioner


Commissioner