Bonuso, andrang UBT

STATE OF NEW YORK STATE TAX COMMISSION

In the Matter of the Petition

of

ANTHONY BORRUSO

AFFIDAVIT OF MAILING OF NOTICE OF DECISION BY (CERTIFIED) MAIL

For a Redetermination of a Deficiency or a Refund of Unincorporated Business: Taxes under Article(s) 23 of the Tax Law for the (Year(s)1964:

State of New York County of Albany

she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 5th day of January , 19 70, she served the within Notice of Decision (** Determinates*) by (certified) mail upon

Anthony Borruso (** Determinates*) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mr. Anthony Burruso, 37 Pine Terrace Staten Island, New York 13012

and by depositing same enclosed in a postpaid properly addressed wrapper in a (pastracture official depository) under the exclusive care and custody of the United States Post Office Department within the State of New York.

Sworn to before me this

6th day of January , 19 70

Syna Hira

L 9 (4-69)

BUREAU OF LAW

MEMORANDUM

Charles Diorio, Ote.

TO:

State Tax Commission

FROM:

Solomon Sice, Mearing Officer

SUBJECT:

Article 16-A

Mearings were held in the above matter at the New York City office on Nevember 9, 1966 and January 27, 1969.

The issues involved herein age: (1) timeliness in filling the applications for revision or yether; (2) timeliness in filling the demands for a hearing; (3) they has consequents are wild as applicat the tempopers lightle blorie and Don Battel the claim that (a) they never received the assessments and (b) they never sufficients for the borr, the atterney the participated in the field entil investigation and filed 37 113's on behalf of the tempopers, to represent them; (b) whether the tempopers lightle blorie and Jun Battel tere members of the joint ventures; and (5) whether the joint ventures; and (5) whether the joint ventures; and (5) whether the joint ventures were subject to unincorporated business temps.

On his recident State return for 1955, the temperer labels District reported in addition to salary componention of \$3,772.36, income from contest winnings in the second of \$35,583.35. In attached a schools claiming a spreadont of gold labour for the grave 1951 through 1955 and reported \$7,976.66 attachments to look. In constant \$505.50 (legal feet paid to Martin Buff, Inc.). The Income the largest distillated the opposite of income. It collisies, an investigation was initiated with respect to the price winnings.

Obstice received in 1955, \$152,500.00, second price in 'The American Puzzle Contest' americal by Unicore Price Inc. She had entered this contest in 1951. This was a putue type puzzle and consisted of a series of initial puzzles (relatively simple) followed by a porter

of progressively difficult "tie bresher" pussles until the viscous very finally determined in 1955. As these pussles had a summitted score value, it was possible to have user than one scinden. The six nembers of the group, Jean Charles, Igindo Morio, Inrie Hammi, Ing Dattel, Larry Vistors and Sidney Widelik, worked together to obtain as many solutions as possible within a specified time or dead line. The best colution was then selected and scholing by the nemines (the entrant) for the group. The next best solutions were than offered for sale to selected invidionle in containing for a portion of price anexts received by them. The individuals agast in the 1975 assessment all participated in the contest by furnishing solutions to Jean Charles. Jean Charles or one or more understang solutions to Jean Charles. Jean Charles of one or new understang solutions to Jean Charles. Jean Charles of the group received (35,000.00) from 11. Technique Cha, furth price winner (\$50,000.00) and \$25,000.00 from Elicabeth 6. Cricrith, fifth price winner (\$35,000.00). The above-mentioned contestants. The total income received by the group or joint venture in 1985 was \$213,500.00 (the vinnings of Jean Charles, \$150,00 was pile to Earthe 257,300.00 (the vinnings of Jean Charles, \$150,00 was pile to Earthe 257,303.33 was distributed equally asset the six numbers. In income was earned by the group during the years 1981 through 1995.

The field audit also disclosed that Jean Gestles, Igindo Dierio, Darlo Remai and New Dattel bended tegether for the perpend of participating in the Northwest Hemorial Puezlo Contest. Rarlo Remai, as nomines for this joint venture, entered said contest and in 1936 was awarded a price of \$21,900.00 which was divided equally enough the few numbers of the group.

Maythe Duff, Eng., participated in the field suits encounties as a representative for the joint ventures (Minutes of Massing 1/87/69 pp. 12, 13). It was claimed by Martin Duff (see Report of Field Audit) that the group had formed for the sole purpose of entering 'The American Purple Contest' which began in 1951 and terminated in 1955 when the americ were under that the number received from the 4th and 5th place winners were incidental to and part of the same transaction. The taxpayers contend that they worked independently for Joan Charles with respect to the 1955 prime enter. As to the 1956 contest entert, they claim they neghed for Barle Massel.

On Spening 27, 1960 unincorporated business for economics when investigated the first mentioned joint venture for \$0.077.76 (Accordance to, 74,05051) and against the second mentioned joint venture for \$952.66 (Accordance to, 74 \$9652) including penity and interest. The accordance were mailed to the temperate, easy of Martin Paff, Reg., I wont took Street, Nor York, Nor York, to Pobruszy 25, 1960 Norths Paff mailed impayable interes protecting each of the aforesentianed accordance. The letters were received on Pobruszy 25, 1960. Perusi applications for protectes were filled on Pobruszy 25, 1961 excepted by Martin Daff, as obtoomy and again for the above-ment temperate. The representatives for blooks and

Dattel contend that no power of atterney was ever filed by Martha Daff. Forms 1099 were properted by Martha Daff, so Atterney and Leoned to cook of the members of the renture (see Engagery Exhibit So. 1). It is to be noted that prior to 1911, a representative for a tempoyer was not required to file a power of atterney.

On August 30, 1961, a letter of demial of the applications for revision of the assessments for 1995 and 1996 were bent to the temperare, care of Martin Duff. No. 19-114's were filed on behalf of the temperare.

Iginio Dierio claims that he was not aware of the accessors until May 4, 1965 when collection efforts were inclinated against him. He paid the accessors on Peccuber 39, 1965 and now seeks a refund. On June 30, 1965 Josh Reichlim, Req. filed a power of atterney on behalf of Iginio Dierio and Pequatted a conference. A similar power of atterney was filed on behalf of Den Rettel. Josh Reichlim, Req. and Charles Nedervey, Req. were designated to represent Iginio Dierio and Den Rettel.

Earle Exempl, Larry Vinters and Sidney Meiglik failed to appear at the formal hearings, although notices of hearing were mailed to them. I am of the opinion that the applications of the aforementioned temperature to dismissed for their necopporature.

I am of the opinion that one or more of the numbers of the joint venture authorized Martha Duff, Req. to act as attorney and represent said joint venture. See Minutes of Meering, Nevember 9, 1956, page 70, wherein Non Dattel testified as follows:

"I called Miss Charles and she said that she had retained Martha Buff to handle her affairs because of the fact that she had made up the tax returns; if any question come up she wanted a lawyer to reprogent her; so, on that basis, I not hise Buff."

I am of the epinion that the joint ventures filed timely applications for revision or refund with respect to the accommod for 1955 and 1956. However, the joint ventures failed to file a timely demand for hearing within minety days from the date of the letter of demial in accordance with the provisions of section 374 of the fax law.

I am of the further epinion that the activities of the joint venture for the purpose of entering puzzle contents and sharing in the winnings thereof constituted the corrying on of an unincorporated

business, the income of which was subject to unincorporated business tax within the intent and meaning of section 386, Article 18-A of the Tax Law, then in effect.

For the reasons stated above, I recommend that the determinations of the Tax Commission be substantially in the forms submitted because the

SOLOMON SIES

BARRER STREET

Es:dv Enc. Folgunsy 3, 1970

IN THE MATTER OF THE APPLICATION

DETERMINATION

JEAN CHARLES, ICINIO DICRIO, MARLE MOCKEL, MEN DAYYEL, LANKY VENYERS AND SIDNEY MELELIK

Joint Venture

POR REVISION OR REPURD OF WILKORPORATED DUBLINESS VALUE UNDER ARTICLE 16-A of VAL TAX LAW FOR THE YEAR 1955

Hovember 9, 1966 and Jamuary 27, 1969 at the effice of the State Tax Sounissien at 80 Sentre Street, New York, New York, before Science Sies, Hearing Officer of the Department of Taxation and Finance, at which hearings the taxpayers, Iginto Rierio and Hen Battel, appeared and were represented by Jank Reichlin, Eng., and Sharles Hedarvey, Req. and Jean Charles having appeared in person on January 27, 1969 and the taxpayers Rarle Hummel, Larry Winters and Sidney Heislik having failed to appear a said hearings although duly notified by notices of hearing mailed to them, testimeny having been taken and the matter having been duly considered,

The State Tax Counissies hereby finds:

the year 1955 the tempayer Iginie Dierie reported, in addition to salary compensation, income from contest winnings in the essent of \$35,583.33. He attached a schedule of spreadback of salary income for the years 1951 through 1955 and reported the amount of \$7,076.66 additional income attributable to the years 1955. He also deducted \$200.00 legal fees paid to an atturney

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named Martha Duff. The Department of Taxation and Finance disallowed the spreadback of income as claimed by the aforementioned Iginio Diorio and imposed additional personal income tax on his share of the total contest puzzle award received by him for the year 1955. In addition, an investigation was initiated with respect to the prize winnings.

(2) As a result of a field audit examination it was disclosed that the taxpayer, Jean Charles, received in 1955 the amount of \$152,500.00 as second prize winner in "The American Puzzle Contest" awarded by Unicorn Press, Inc. Jean Charles entered this contest in 1951. This was a rebus type puzzle and consisted of a series of initial puzzles (relatively simple) followed by a series of progressively difficult "tiebreaker" pussies until the winners were finally selected in 1955. As these puzzles had a numerical score value, it was possible to have more than one solution. The six members of the group, Jean Charles, Iginio Diorio, Karle Manuel, Ben Pattel, LarryfVinters and Sidney Meislik, worked together to obtain as many solutions as possible within a specified time or dead line. (Minutes of Hearing, 1/27/69, pp. 7 & 8.) The best solution was then selected and submitted by the nominee (the entrant) for the group. The next best solutions were then offered for sale to selected individuals in exchange for a portion of prize awards received by them. Jean Charles or one or more members of the group received \$35,000.00 from E. Toshiharu Oka, fourth prize winner (\$50,000.00) and \$25,000.00 from Elizabeth C. Griffith, fifth prize winner (\$35,000.00). The above mentioned \$61,000.00 represented the sale of solutions to the aferementioned contestants. (Minutes of Hearing, 1/27/69, pp. 8 & 9.) The total income received by the group in 1955 was \$213,500.00 (the winnings of Jean Charles, \$152,500.00 plus the aforementioned \$61,000.00) of which \$1.200.00 was paid to Martha Duff for "legal services,"

leaving a balance of \$212,300.00 of which \$35,383.33 was distributed equally among the six members. (Minutes of Hearing, 1/27/69, p. 7; Minutes of Hearing, 11/9/66, p. 62.) We income was earned by the group during the years 1951 through 1954. He unincorporated business tax returns were filed by the above captioned joint venture. Martha Buff, Esq. participated in the field audit examination as a representative for the joint yenture (Minutes of Mearing, 1/27/69, pp. 12 & 13.)

(3) On January 27, 1966 the Department of Taxation and Finance made an additional assessment against John Charles, Iginio Diorio, Rarle Homel, Ben Dattel, Larry Winters and Sidney Neillik, joint venture, (Assessment No. FA 85651) for the year 1955 based on field sudit findings that: (a) the aforementioned individuals were engaged in a joint venture pertisipating in puzzle contests and sharing in the winnings; (b) that said joint venture was conducted with regularity and continuity and constituted the carrying on of an unincorporated business and (c) that the gross income received by said entity in the amount of \$213,500.00 was subject to unincorporated business tax. An allowance was made for fees paid to Martha Buff, Req. in connection with the above mentioned income in the amount of \$1,200.00. Maximum allowance for services of the six co-venturers was allowed in the amount of \$30,000.00. Unincorporated business tax was assessed in the amount of \$7,092.00 together with penalty and interest in the amount of \$1,985.76, for a total of \$9,077.76. The notice of assessment was mailed to the tempayers care of Martha Duff, Esq., 8 W. 46th Street, New York, New York. On February 23, 1960 Martha Buff mailed a letter to the Department of Taxation and Finance in which she indicated that she had been requested by the tempayers named in the aferementioned assessment to protest said assessment. On February 15, 1961 Martha Duff as attorney and agent for the joint venture of John

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្រីស្ពាស្ត្រ ស្រីស្តីម្នាក់ ប្រទេស ស្ថិតសម្តេចនៃការ ប្រើប្រើស្ថិតសម្តី មាន ដូច្នេះ ប្រធានិធិប្បាយ ស្ថិត ប្រើប្រ ការសាសន៍ បាន ការស្ថិត នេះ ដីលើ បាន ការសាសន៍ បានសម្រាប់ គឺ បានប្រធានិធី បានសម្រាប់ បានប្រើប្រាស់ ដូច្នេះប្រើប្រ Charles, Iginio Diorio, Earle Hummel, Den Dattel, Larry Vinters and Sidney Meislik filed an application for revision or refund on Form IT-113 with respect to the assessment of unincorporated business taxes issued against the joint weakure berein.

- (4) On August 30, 1961 the Department of Empirical and Finance mailed a letter of denial of said application for revision or refund to the aforementioned Martha Duff at the address set forth by her in the application for revision or refund. No demand for heaving was filed by Martha Duff, Dug. or any other number of the joint venture within 90 days from the date of the mailing of the aforementioned letter of demial as required by Section 374, Article 16-A of the Tax Loss, then in effect.
- (5) On June 30, 1965 Jack Reichlin, Req. filled & power of attorney executed by Iginio Bierio authorizing Charles McGarvey, Esq. and Jack Reichlin, Esq. to represent him before the Department of Taxation and Finance in connection with procoodings involving unincorporated business taxes for the years 1955 and 1956. A similar power of attorney was filed on behalf of Ben Dattel. It is contended that Martha Buff was not authorized to represent Iginio Diorio, Ben Battel er Jeen Charles. Movever, Den Dattel testified as follows: "I exiled Miss Charles and she said that she had retained Martha Daff to handle her affairs because of the fact that she had made to the tax returns and if any question came up she wanted a lamper to represent her; so, on that basis, I met Hiss Buff." (Minutes of Hearing, 11/9/66, p. 70.) Prior to 1961, a representative for a tampayer was not required to file a power of attention. Although there was conflicting testimony as to the distribution of the proceeds from the winnings, Mr. Dattel testified as follows: "As far as I understand I had the same as all of the others; there was no higher or lower, Miss Charles is a very

en ...

honorable woman." (Minutes of Hearing, 11/9/66, p. 62.) Iginto Diorio paid the assessment in December, 1965 and new seeks a refund thereof.

(6) The activities of the tampayers, Jean Charles, Iginio Diorio, Earle Hammel, Sen Battel, Larry Winters and Sidney Meislik in 1955 and prior thereto constituted a Joint venture for the purpose of participating in pussle contests and sharing in the winnings thereof. The aforementioned activities continued from 1951 through 1955 and were conducted with regularity and continuity within the State of New York by the members of the aforementioned joint venture.

Based upon the foregoing findings and all of the evidence presented herein,

The State Tax Commission hereby DETERMINES:

- (A) One of more of the members of the above mentioned.

 Joint venture authorized Martha Buff, Esq. to act as atterney and agent for and represent the said joint venture.
- (B) The joint venture filed a timely application for revision or refund with respect to Assessment No. PA \$5551 for the year 1955.
- (6) The joint venture failed to file a timely demand for a hearing within 90 days from the date of the letter of denial of the application for revision as more fully set forth in finding (4) above in accordance with the previsions of Section 374 of the Tax Law, then in effect. The application for revision or refund filed by the joint venture is therefore dismissed.
- (D) Barle Burnel, Larry Winters and Sidney Meislik having defaulted in appearance at said hearings, the applications for revision with respect to said individuals are hereby dismissed for their nonappearance.

(E) In any event, the activities of the above named joint venture, as more fully set forth in findings (2) and (6) above, constituted the carrying on of an unincomporated business. The income derived therefrom was therefore subject to unincorporated business tax within the intent and meaning of Section 386, Article 16-A, of the Tax Law, then in effect.

BATED: Albany, New York this 9th day of March , 1970.

STATE TAX COMMISSION

/s/	Norman	Gallman	
	PRE	TDE T	

/s/ A. Bruce Manley

(Mitty Wern

MANUEL OF THE YORK

STATE THE COMMENCE

THE SHARE MARKET OF SHE ADDITIONS

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DETERMINATION

JEAN CHARLES, MITTED DICERO,

SOME THE SE

POR MEVICION OR MEVEND OF WITH-OUTPOLICED SOUTHERN TAXES COMMI ANTICLE 16-A OF THE TAX LOT FOR THE TOAT 1056

Hearings having been held in the shore mother an Havenber 9, 1966 and January 27, 1969 at the office of the State Tax Commission at 80 Centre Street, Her York, Her York before Solamon Sice, Hearing Officer of the Supertment of Taxation and Jimmes, at which hearings the tempayers Iginio Mario and Sin Dattel appeared and were represented by Jack Reichlin, Roy, and Charles Hadarvey, Roy, and Jean Charles having appeared in person on January 27, 1969 and the tempayer Mario Hamel having Salidd to appear at said hearings, although daily notified by notions of hearing mailed to him, testimeny having been taken and the matter having been daily considered,

The State Tex Countesies hereby Sinds:

(1) As a result of a State multi emmination, it was disclosed that Jean Charles, Iginto Mario, Burio Hamal and Ben Dattel entered into a joint venture for the purpose of participating in purely contacts, more particularly the Herthwest Hannikl Panale Contact and charing in the winnings thereof. Burio Hamal, as manines for this joint renture, entered this contact and in 1956 was amended a prize of \$62,500.00 which was divided equally among the four joint renturers. To uninterperated business this returns were filled by the joint renture. Hartha Buff, Bug.

participated in the field audit commination as a representative for the joint venture and was authorized by one or more members of the group to represent said joint venture (Minutes of Members 1/27/69, pp. 12 a 13).

- (2) on Jamery 27, 1960, an unincorporated business tax assessment was issued against the above mentioned joint venture for the year 1956 (Assessment No. 74 69692) in the assessment of \$550.66 including penalty and intercet on the ground that the activities of said joint venture constituted the carrying on of an unincorporated business, subject to unincorporated business tax. On February 23, 1960 Martin Daff mailed a letter to the Department of Sanation and Finance in which she indicated that she had been requested by the temperors maned in the afortunetional accomment to protect said assessment. On February 15, 1961 Martin Daff, as atterney and agent for the joint venture of Joan Charles, Iginio Diorio, Revie Sanati and Res Setted, filed an application for revision or refund on Form 19-113 with respect to the assessment of unincorporated business tames insuch against the Joint venture herein.
- (3) On August 30, 1961 the Department of Touckion and Finance mailed a letter of denial of anid application for reviolen or refund to the aforementioned Martin Duff at the address set forth by her in the application for revision or refund. He denial for hearing was filed by Martin Duff, Heq. or any other member of the joint venture within 90 days from the date of the mailing of the letter of denial as required by Section 374, Article 25-A of the Tex Lor, then in offect.
- (4) on June 30, 1965 Jack Relability, Not, Elied a power of atterney emouted by Iginio Biorio authorizing Charles Helicry, Not, and Jack Relability, Not, to represent him before the Reportment of Tamation and Finance in connection with proceedings involving unincorporated business tames for the years 1995 and 1986. A

is contended that Martha Buff was not authorized to represent

Iginio Morio, Non Battel or Joan Charles. However, Non Notes!

testified as fullers: "I ealled Miss Charles and she said that
she had retained Martha Buff to handle her affairs become of
the fact that she had made up the tex returns and if any question
came up she wasted a langur to represent her; so, on that basin,
I not Miss Daff." (Minutes of Marring, 11/9/66, p. 70.) Frior
to 1961, a representative for a tempayor was not required to
file a power of attorney. Although there was conflicting testimany
as to the distribution of the proceeds from the winnings, Mr.
Buttel testified as follows: "As far as I understand I had the
same as all of the others; there was so higher or lawer, Miss
Charles is a very honorable wasen." (Mission of Marring, 11/9/66,
p. 62.)

(5) The activities of the temperor, Jean Carden, Iginic Diorio, Ranke Hamel and Den Battel in 1996 and prior therete constituted a joint venture for the purpose of participating in puzzle contests and starting in the winnings thereof. The aforementioned activities were conducted with regularity and continuity within the State of Nor York by the numbers of the aforementioned Joint venture.

Sand upon the Spragoing Sindings and all of the evidence presented herein.

The State Tax Countrates hereby

- (A) One or more of the numbers of the above wontlands joint venture extherized Martha Duff, Mag. to act so externey and agent for and represent the said joint venture.
- (B) The joint venture flied a timely application for revision or refund with respect to Associated Bo. 74 89652 for the year 1886.
 - (d) The joint renture failed to file a timely demand

for a bearing within 90 days from the date of the letter of dealed of the application for revision as more fally not forth in finding (3) above in accordance with the provisions of Section 374 of the Text Law, then in effect. The application for revision or retund filled by the joint venture is therefore disminable.

- (D) Earle Hamel having defunited in appearance of each hearings, the application for nevision with respect to each individual to hereby dismissed for his managements.
- (2) In any event, the activities of the share mind joint venture, as more fally set forth in Sindings (1) and (9) above, constituted the carrying on of an unknowpowered business. The income derived therefore was therefore entject to unknowpowed business ten within the intent and meaning of Souther 104, Article 15-4 of the Tex Law, then in offert.

Butod: Albumy, How Took this 9th day of March

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designation of the contract of	Norman Gallman	
	A. Bruce Manley	
/s/	Milton Koerner	