

STATE OF NEW YORK
STATE TAX COMMISSION

HEARING UNIT - File Copy

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In the Matter of the Petition :
of :
F. D. Babcock & Co., Vincent :
Mann and Walter Benedict - :
Joint Venturers :
for a Redetermination of a Deficiency :
or for Refund of Unincorporated Busi- :
ness Taxes Under Article 23 of the :
Tax Law for the years 1963 and 1964 :

DECISION

CASE LAW OPERATIONS

REMARKS

The taxpayers having filed a petition pursuant to Sections 722 and 689 of the Tax Law for a redetermination of a deficiency under date of March 13, 1967, of unincorporated business taxes imposed by Article 23 of the Tax Law for the years 1963 and 1964 and a hearing having been duly held before Nigel G. Wright, Hearing Officer, and the record having been duly examined and considered,

The State Tax Commission hereby

FINDS:

1. The issues herein are the correct computation of unincorporated business tax upon a joint venture when one member, but not the other members thereof, has no other similar trade or business, and the alleged double taxation of income on which a tax has already been paid by one member.

2. The sole question of fact herein is whether one member of the joint venture is in fact engaged in no business which is similar to the business of the joint venture. Since neither that member nor anyone else personally acquainted with the facts appeared at the hearing, it is hereby found that the member in question, Mr. Mann, did not engage in any other trade or business similar to the business of the joint venture and further that he did not engage in any other trade or business of any kind.

3. The deficiencies as asserted, amount to \$934.35 for 1963 and \$1697.24 for 1964, both with lawful interest.

4. The joint venture filed a New York partnership return (IT-204) for each taxable year and completed Schedule "U-A" thereon showing the income of the unincorporated business. The joint venture, however, computed no tax and paid no tax stating on the returns that the tax would be computed and paid by each of the three joint venturers individually on his own share of venture income.

5. Two of the joint venturers, L. D. Babcock & Co. and Walter Benedict each carry on individually a trade or business similar to the trade or business carried on by the joint venture. It is conceded by the Department that the method of computing and paying the tax chosen by the joint venture is proper with respect to these two venturers (see Reg. 20 NYCRR 280.3 "question 9" and "question 10").

6. The third joint venturer, Vincent Mann, carried on no trade or business individually. The Department alleges that in this case the tax has to be computed and paid by the joint venture as an entity and not by Mr. Mann individually. The amounts of tax paid by Mr. Mann --- \$817.14 for 1963 and \$1425.80 for 1964 less a \$100 charge because of a computed increased personal income tax liability of Mr. Mann -- will be refunded or credited in full against any liability on the deficiency here in question.

7. The method of computation of the tax follows:

7a. Unless otherwise indicated, computations shown herein- after use figures from the 1963 taxable year only. The method of computation for 1964 is identical with the method for 1963.

7b. The net income from the venture before any allowance for partners salaries is \$147,024.78. Of this \$30,428.42 is Mr. Mann's share and \$116,596.36 is the share of the other two joint venturers.

7c. The joint venture is allowed a deduction of \$10,000.00 for the personal services of Mr. Mann and Mr. Benedict under Tax Law Sec. 708(a) for the "personal services" of "each partner" actively engaged in the venture. It is conceded in this case that no deduction is permitted for the services of L. D. Babcock & Co. which itself is a partnership.

7d. The net income from the business of the venture is \$147,024.78 less the \$10,000 deduction for partners' salaries for a net figure of \$137,024.78.

7e. The joint venture is allowed an exemption of \$5,000 under Tax Law Section 709(1).

7f. The joint venture is entitled to an "exemption" under Tax Law Section 709(2) by reason of the distributable shares of income paid to Mr. Benedict and L. D. Babcock & Co. which will incur an unincorporated business tax to them. This exemption is computed as such partners "proportionate interest" of the net income from the business. Such proportionate interest is computed as the ratio of the distributable shares of such partners to the total of all distributable shares (net business income before the allowance for partners' salaries).. This ratio is \$116,596.36 divided by \$147,024.78. The exemption, so computed, amounts to \$108,665.97.

7g. The correct taxable business income of the joint venture is computed as \$147,024.78 less the salary deduction of \$10,000.00, the exemption of \$5,000.00 and the additional exemption of \$108,665.97 leaving a net figure of \$23,358.81.

8. The deficiencies asserted were computed in the manner set forth in paragraph eight.

9. The taxpayer's method of computations differs from that shown in paragraph eight primarily by reason of extra deductions for salaries paid to partners.

Upon the foregoing findings and all the evidence in the case,

The State Tax Commission hereby

DECIDES:

A. The computation of the deficiency for each year is correctly computed.

B. The refund as found in paragraph seven due because of the tax paid by Mr. Mann will be either refunded or credited against the tax due from the joint venture.

C. There is no "double taxation" of any income of the joint venture.

D. The petition for redetermination is dismissed and the deficiency is affirmed together with such interest, if any, as may be due under Section 684 of the Tax Law.

DATED: Albany, New York

STATE TAX COMMISSION

March 24, 1970

Norman Gallman
PRESIDENT

Barry Marley
COMMISSIONER

Walter Korman
COMMISSIONER