

STATE OF NEW YORK
STATE TAX COMMISSION

HEARING UNIT - FILE COPY

UBT

23

In the Matter of the Petition

of

WILLIAM E. BRINKMAN

For a Redetermination of a deficiency
of Unincorporated Business Tax under
Article 23 of the Tax Law for the
year 1963

DECISION

Isolates not UBT income

The taxpayer having filed, pursuant to Sections 722 and 689 of the Tax Law, a petition for a redetermination of a deficiency, under notice of February 28, 1964, of unincorporated business income tax imposed under Article 23, of the Tax Law for the year 1963 and a hearing having been held before Nigel G. Wright, Hearing Officer, and the record having been duly examined and considered,

The STATE TAX COMMISSION hereby

FINDS:

(1) The asserted deficiency is based upon the addition to the taxpayer's unincorporated business income of an amount which the taxpayer receives as salary from employer's and also the addition to the same income of \$5,024.84 of "other income." The deficiency due to the "other income" is admitted by the taxpayer. The amount of the salary income is also admitted but taxpayer contends it was not part of the income of his unincorporated business.

(2) The unincorporated business of taxpayer is an insurance brokerage business, of which he is the sole proprietor, doing business under the name of April Brokerage Company with an office at 84 William Street, Manhattan.

(3) The salary received by taxpayer was for services rendered as a manager of two commercial buildings one located at 62 William Street, and owned by Mar-Pen. Co. Inc., and one located at

110-116 Nassau Street and owned by Stamp Center Building Corporation. The president and major stockholder of each corporation was the same person, Mr. Seymour Cohn. The business office of each was at 84 William Street, Manhattan. The taxpayer had no financial interest in either corporation.

(4) The taxpayer had his office for the corporation's business at the 84 William Street building. The rent for this office was paid by a separate firm which acted as managing agents for the buildings. In addition taxpayer had an office in each of the two buildings he managed.

(5) The taxpayer rendered services to the above corporations as a manager and supervisor. His usual hours were from 9 to 5 on five days of the week. He was responsible for hiring and firing cleaning women, elevator operators and porters. He was responsible for maintenance and the purchase of necessary repair parts. He was responsible for securing new tenants and would entertain prospects.

(6) Taxpayer was supervised in his activities as a real estate manager, on a day to day basis, by the President of the employer corporations.

(7) Income taxes and social security payments were withheld from the sums paid to taxpayer by the corporations.

(8) The insurance business was conducted on weekdays and on the evenings and lunch hours of regular business days. In addition taxpayer conducted insurance business as occasion permitted and usually by telephone during the regular working hours of his employment as a building manager. This was done with the knowledge and consent of Mr. Seymour Cohn and occupied about 2% of the time during which the taxpayer was otherwise available for his work as a building manager.

(9) The business office and telephone of the insurance business was the same as the office used by taxpayer as a building manager. Files pertaining to the insurance business were kept in that office.

(10) Taxpayer sold the fire insurance policies covering the two buildings he managed.

(11) Taxpayer incurred certain expenses including expenses for telephone and automobile in both his real estate and insurance activities for which he was reimbursed by no one and which he deducted on his Federal tax returns.

(12) Taxpayer did not advertise or hold himself out as a manager of real estate for other people during the taxable year or prior thereto.

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

The STATE TAX COMMISSION hereby

DECIDES:

(A) That the activities of taxpayer as a manager of real estate were services rendered as an employee; that such activities were not a business regularly carried on by him within the meaning of Tax Law Section 703(b), that such services were in no way related to the taxpayers activities in the business of selling insurance.

(B) That by admission of the taxpayer there is a deficiency in tax due by reason of a failure to include in income the sum of \$5,024.84. This deficiency is determined to be \$160.79.

(C) The deficiency asserted under date of January 17, 1966 is erroneous in part and is redetermined to be \$160.79 and as re-determined is affirmed together with such interest, if any, as may be lawfully due under Section 684 of the Tax Law.

DATED: *Albany, N.Y.*

February 10, 1970

STATE TAX COMMISSION

Norman Gallman

PRESIDENT

George W. Wadley

COMMISSIONER

William Korman

COMMISSIONER