

STATE OF NEW YORK  
STATE TAX COMMISSION

*Herman Samuel E.  
H.B. 7 Helen L.  
H.H.*

In the Matter of the Petition

of

Samuel E. & Helen L. Herman

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) 1955, 1956 & 1957

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

State of New York  
County of Albany

Martha Funaro, being duly sworn, deposes and says that  
she is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 20th day of January, 1971, she served the within  
Notice of Decision (or Determination) by (certified) mail upon Samuel E.

& Helen L. Herman (representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Dr. Samuel E. & Helen L. Herman  
144 E. 57th Street  
New York, New York

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

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

Sworn to before me this

20th day of January, 1971.

*Linda Wilson*

*Martha Funaro*

STATE OF NEW YORK  
STATE TAX COMMISSION

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State of New York  
County of Albany

Martha Funaro , being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 20th day of January , 1971, she served the within Notice of Decision (or Determination) by (certified) mail upon Samuel E. & Helen L. Herman (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Bernstein, Mason & Pincus  
9 East 40th Street  
New York, New York

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

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

Sworn to before me this

20th day of January , 1971.

Leah Wilson

Martha Funaro

STATE OF NEW YORK  
STATE TAX COMMISSION

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IN THE MATTER OF THE APPLICATION

OF

SAMUEL E. and HELEN L. HERMAN

FOR REVISION OR REFUND OF UNINCORPORATED  
BUSINESS TAXES UNDER ARTICLE 16-A OF THE  
TAX LAW FOR THE YEARS 1955, 1956 AND  
1957.

DETERMINATION

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Samuel E. Herman, having duly filed applications  
for revision or refund of unincorporated business taxes under  
Article 16-A of the Tax Law for the years 1955, 1956 and  
1957, and a hearing having been held thereon on January 31,  
1964 at the office of the State Tax Commission, 80 Centre  
Street, New York, New York, before Francis X. Boylan, Hearing  
Officer of the Department of Taxation and Finance, and the  
taxpayer having appeared personally and testified, and  
Mr. Alexander Mason, a certified public accountant, having  
been present and testified on behalf of the taxpayer, and  
the record having been duly examined and considered,

The State Tax Commission hereby finds that:

(1) By notices of additional assessment,  
B 570843, dated March 19, 1959; B 570844, dated March 19, 1959;  
and B 774219, dated April 21, 1960, the Department of Taxation  
and Finance of the State of New York assessed unincorporated  
business tax for the years 1955, 1956 and 1957 on the net  
business income reported by the taxpayer for those years  
in the amounts of \$22,145.41, \$27,359.02 and \$23,108.05,  
assessing such tax in the respective amounts of \$508.65,  
\$659.36 and \$504.46 for the said years 1955, 1956 and 1957,  
respectively;

(2) The taxpayer, a licensed veterinarian, was the proprietor of the New York Veterinary Hospital, a veterinary hospital operated in rented premises at 144 East 57 Street, New York, New York; that at the same address the taxpayer also operated a kennel called the New York Dog Club where dogs were boarded and grooming services such as clipping and bathing of the dogs were provided;

(3) The taxpayer himself rendered all of the professional services given at the site and had no professional veterinary staff. The single clerical employee devoted a portion of her services in the professional area. Only a small part of the labor personnel's total working time was employed in the furthering of the taxpayer's professional services as a veterinary;

(4) That capital was not a material factor in the conduct of the professional aspect of the taxpayer's income-producing activities;

(5) That accountancy procedures adequately established that the fees received by the taxpayer for professional services could be segregated from the combined receipts of nonprofessional sales and services as one factor and the said professional services as the other; that the professional services were about 44%, and the nonprofessional sales and services about 56%, of the total receipts from the combined sources;

(6) That the total income from the combined professional and business venture and the apportionment thereof to the professional and nonprofessional activities, in accordance with the stated ratio, and the expenses related to the professional and nonprofessional areas are

stated as follows, the expenses being apportioned in some cases in accordance with the above stated ratio and in other cases on a different ratio but reflecting in either case the actual use made of the services or materials that constituted the expenses, the expenses so apportioned pro rata being only those stated below as "other deductions":

STATEMENT OF INCOME, PROFIT AND LOSS FOR THE YEAR 1955

BY: PROFESSIONAL & NONPROFESSIONAL DEPARTMENTS

	<u>Total</u>	<u>Professional</u>	<u>Non- professional</u>
<u>Total Income</u>	<u>\$68,964.34</u>	<u>\$30,420.02</u>	<u>\$38,544.32</u>
<u>Deductions</u>			
Labor	20,915.16	3,500.00	17,415.16
Payroll & City Taxes	978.53	50.00	928.53
Rent	2,550.00	255.00	2,295.00
Depreciation	2,588.40	259.00	2,329.40
Repairs	163.50		163.50
Other Deductions	<u>19,623.34</u>	<u>8,655.70</u>	<u>10,967.64</u>
<u>TOTAL DEDUCTIONS</u>	<u>46,818.93</u>	<u>12,719.70</u>	<u>34,099.23</u>
NET PROFIT- <u>CALENDAR YEAR-1955</u>	<u>\$22,145.41</u>	<u>\$17,700.32</u>	<u>\$ 4,445.09</u>

STATEMENT OF INCOME, PROFIT & LOSS FOR THE YEAR 1956

BY: PROFESSIONAL & NONPROFESSIONAL DEPARTMENTS

	<u>Total</u>	<u>Professional</u>	<u>Non- professional</u>
<u>Total Income</u>	<u>\$73,798.33</u>	<u>\$32,524.43</u>	<u>\$41,273.90</u>
<u>Deductions</u>			
Purchases-Supplies	9,488.75	4,185.60	5,303.15
Labor	20,649.55	3,500.00	17,149.55
Payroll & City Taxes	877.62	50.00	827.62
Rent	2,550.00	255.00	2,295.00
Depreciation	1,242.42	125.00	1,117.42
Repairs	145.51		145.51
Other Deductions	<u>11,485.46</u>	<u>5,066.03</u>	<u>6,419.43</u>
<u>TOTAL DEDUCTIONS</u>	<u>46,439.31</u>	<u>13,181.63</u>	<u>33,257.68</u>
NET PROFIT- <u>YEAR 1956</u>	<u>\$27,359.02</u>	<u>\$19,342.80</u>	<u>\$ 8,016.22</u>

STATEMENT OF INCOME, PROFIT AND LOSS FOR THE YEAR 1957

BY: PROFESSIONAL & NONPROFESSIONAL DEPARTMENTS

	<u>Total</u>	<u>Professional</u>	<u>Non- professional</u>
<u>Total Income</u>	<u>\$72,129.45</u>	<u>\$31,809.09</u>	<u>\$40,320.36</u>
<u>Deductions</u>			
Purchases-Supplies	11,848.84	5,213.49	6,635.35
Labor	19,849.17	3,500.00	16,349.17
Payroll & City Taxes	1,059.32	70.00	989.32
Rent	2,550.00	255.00	2,295.00
Depreciation	1,214.18	121.42	1,092.76
Repairs	99.64		99.64
Other Deductions	<u>12,400.25</u>	<u>5,456.11</u>	<u>6,944.14</u>
<u>TOTAL DEDUCTIONS</u>	<u>49,021.40</u>	<u>14,616.02</u>	<u>34,405.38</u>
<u>NET PROFIT-</u> <u>YEAR 1957</u>	<u>\$23,108.05</u>	<u>\$17,193.07</u>	<u>\$ 5,914.98</u>

Upon the foregoing findings and all the evidence presented herein, the State Tax Commission hereby

DETERMINES:

(A) That the total receipts reported by the taxpayer in the years under consideration included receipts for services rendered by him as a veterinarian and that such portion of the receipts were received in the practice of a profession not subject to unincorporated business tax;

(B) That the total receipts of the taxpayer not referable to professional services rendered by him as a veterinarian were susceptible of being segregated by accountancy procedures from the total receipts of the taxpayer as his combined income from business or profession, and were about 56% thereof; and the nonprofessional receipts are hereby fixed in that percentage of the total receipts;

(C) That the net income related to such nonprofessional activities, stated in paragraph 6 above, was subject to the unincorporated business tax, but no tax was actually due on the said amounts for the years 1955 and 1957 which were less than the amount of the statutory exemption allowable in the amount of \$5,000, taken together with the statutory deduction in an amount up to 20% of the said taxable nonprofessional net income;

(D) That accordingly, two of the additional assessments, assessed by notices of additional assessment B 570843, March 19, 1959; and B 774219, April 21, 1960; more fully described heretofore in paragraph 1, are cancelled in full;

(E) That as to the year 1956 the taxes are restated as follows:

1956 ASSESSMENT B 570844 UNINCORPORATED BUSINESS TAX

Net business income reported	\$ 8,016.22
Allowance for taxpayer's service, 20%	<u>1,603.24</u>
Net business income	6,412.98
Statutory exemption	<u>(5,000.00)</u>
Balance subject to tax	1,412.98
Tax @ 4%	56.52
Statutory reduction	<u>(8.48)</u>
Net Unincorporated Business Tax Due	\$48.04

AND, IT IS SO ORDERED.

DATED: Albany, New York, the 20<sup>th</sup> day of January, 1971

STATE TAX COMMISSION

Norman G. Kellerman  
President

William H. Kellerman  
Commissioner

Milton Kellerman  
Commissioner