

Fiorenzo, Joseph and Josephine

State Tax Commission

Ira J. Palestin

**Joseph Fiorenzo and Josephine Fiorenzo,
his wife**

**Formal Hearing on Petition for Redetermination
of Deficiency in the amount of \$4,795.96 of
Personal Income Tax for years 1961, 1962 and 1963**

By petition sworn to March 31, 1963, these taxpayers prayed for redetermination of deficiency in the sum of \$4,795.96 for tax years 1961, 1962 and 1963. The ground of their petition is the disallowance of a deduction, "cost of goods sold", reached by subtracting a "closing inventory" sum for each of the applicable years from the total of such year's "opening inventory" and additional current purchases during the year.

A formal hearing was held May 22, 1967 at 80 Centre Street, New York, N. Y. before Ira J. Palestin as Hearing Officer. Taxpayers did not attend the hearing; instead, they were represented by Murray Schindel, CPA, whose power of attorney from taxpayers appears in the file. Mr. Schindel responded to questioning by the Hearing Officer. At the conclusion of this colloquy Mr. Schindel stipulated that all of the items of fact in the statements he made on the record constituted stipulations of fact in behalf of taxpayers.

At the hearing it was shown that for the applicable years, 1961, 1962 and 1963, taxpayers were in the retail dresswear rental business, buying and renting tuxedos for weddings and other occasions. Their income tax returns show their business to be retail dresswear rental. (See paragraph (1) in the accompanying proposed determination.) Occasionally, taxpayers sell tuxedos to "whoever will come in" (i.e. to whoever will purchase). The representative was unable to give a breakdown as between volume of total rental receipts and total sales receipts. But the evidence in the file indicates that their dresswear "are used for rentals only. No merchandise is sold." (See paragraphs (2) and (3) of accompanying proposed determination.)

It is found that taxpayers' own characterization of their business appearing on their Federal and State income tax returns, as well as on their unincorporated business tax returns, as being the dresswear rental business stamps unitemized and unidentified

sales of second hand merchandise as de minimis.

Further supporting the conduct of a rental business, in which their dresswear items were capital assets, taxpayers depreciated such dresswear straight-line over a three-year period. At the same time they treated their dresswear items as inventory, subject to deduction of cost of goods sold from gross receipts. (For further identification of such cost of goods sold deduction see paragraph (4) of the accompanying proposed determination.) In this manner, taxpayers took duplicate and cumulative deductions referable to the merchandise used in their dresswear rental business: (a) the cost of such items by straight-line depreciation over a three-year period and (b) a deduction from gross receipts of "closing inventory" as subtracted from the particular year's "opening inventory" plus that year's current dresswear purchases.

Income Tax Bureau's statement of audit changes dated March 15, 1965 eliminated the cost of goods sold, less materials and supplies, for 1961, 1962 and 1963. Thereby taxable income as shown in paragraph (6) of the accompanying proposed determination was increased. A notice of deficiency in the sum of \$4,151.35 was issued.

Upon the record and evidence in the file, such statement of audit changes and notice of deficiency for the applicable years are correct. The proposed determination which this memorandum accompanies so finds.


Ira J. Palestine

Dated: January 31, 1968

2-14-68

STATE OF NEW YORK

STATE TAX COMMISSION

IN THE MATTER OF THE PETITION

OF

JOSEPH FIORINDO and JOSEPHINE FIORINDO, his wife

FOR A REDETERMINATION OF A DEFICIENCY OR FOR REFUND OF PERSONAL INCOME TAXES UNDER ARTICLE 22 AND UNINCORPORATED BUSINESS TAXES UNDER ARTICLE 23 OF THE TAX LAW FOR THE YEARS 1961, 1962 and 1963.

Taxpayers, **JOSEPH FIORINDO and JOSEPHINE FIORINDO**, his wife, having duly filed a petition for redetermination of deficiency or for refund of personal income taxes and unincorporated business taxes for the years 1961, 1962 and 1963 (File No. 3-8097097), and a formal hearing having been held at the Office of the State Tax Commission, State Office Building, 80 Centre Street, New York, N. Y. on May 22, 1967 at 10:00 A.M. o'clock, and **MURRAY SCHINDL, C.P.A.**, having appeared and stipulated on the record statements of facts at the said hearing in behalf of taxpayers, and the matter having been duly examined and considered,

The State Tax Commission hereby finds:

(1) During the years 1961, 1962 and 1963, taxpayers were in the retail dresswear rental business. (See their own characterization of their business given in their IT-201, IT-202 and Form 1040, Schedule C, returns for years 1961, 1962 and 1963.) Taxpayers "buy tunics and then, in general, rent them to people" for weddings and other festivities. Additionally, "they sell tunics to whoever will come in" (s.m.3).

(2) No breakdown as between volume of total rentals and of total sales was supplied by taxpayers or by their said representative **Murray Schindel, C. P. A.** at the hearing although such information was requested (s.m.3, 9-10). No itemization was given of taxpayers' sales of items bought for their retail dresswear rental business although such information was requested (s.m. 10-12, 14).

(3) Taxpayers' unspecified sales of second hand clothing purchased new for their rental business are minimal in the production of the gross receipts from their business. See the letter dated December 17, 1964 of William W. Katz, taxpayers' accountant during the years at issue: "All of these are used for rentals only. No merchandise is sold."

(4) For the tax years in issue, 1961, 1962 and 1963, taxpayers depreciated dresswear items straight-line over a three-year period. See Schedule C, 1040's for 1961, 1962 and 1963 in the file. In addition, dresswear items were included as opening inventory for such years, to which were added taxpayers' purchases for each respective year; from such total was deducted "closing inventory." (s.s.4) The result so reached for each year was reported as "cost of goods sold." See Schedule C, taxpayers' 1040's for 1961, 1962 and 1963.

(5) Thus, while annually deducting straight-line depreciation on dresswear items, recovering the cost thereof over a three-year period, taxpayers also deducted from gross receipts for each year under review the cost of dresswear items discontinued during such year. In this wise taxpayers took duplicate and cumulative deductions referable to the merchandise used in their business of dresswear rental.

(6) On March 15, 1965 a statement of audit changes eliminating as a deduction the cost of goods sold, less materials and supplies, for 1961, 1962 and 1963, and correspondingly increasing taxable income was issued as follows:

	1961	1962	1963
Cost of goods sold	\$15,397.67	\$9,497.54	\$26,227.36
Less materials & supplies	<u>383.43</u>	<u>360.40</u>	<u>1,000.82</u>
Additional taxable income	\$14,984.44	\$9,137.24	\$25,226.11

(7) On the same day there was issued a notice of deficiency in the sum of \$4363.54 with interest, increasing basic Personal Income Tax and Unincorporated Business Tax for the respective years as follows:

Personal Income Tax	¹⁹⁶¹ \$483.04	¹⁹⁶² \$412.90	¹⁹⁶³ \$1748.39
Unincorporated Business Tax	\$42.32	\$21.20	\$93.49

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

DECIDES:

(A) The inclusion within gross business receipts of sums, if any, derived from the sale of dresswear is de minimis. Taxpayers' dresswear stock constitute capital assets in their rental business and are subject to depreciation, which was taken. It is erroneous additionally to deduct from gross receipts, as goods sold in each year, the cost of such capital assets discontinued from operations in respective years.

(B) The statement of audit changes and the notice of deficiency for years 1961, 1962 and 1963 are correct and do not include any tax or other charge not lawfully due and owing. The petition of taxpayers for redetermination or refund is denied.

Dated, Albany, New York this 13th day of March, 1968.

STATE TAX COMMISSION

/s/

JOSEPH H. MURPHY

President

/s/

A. BRUCE MANLEY

Commissioner

/s/

SAMUEL E. LEPLER

Commissioner