

STATE OF NEW YORK
STATE TAX COMMISSION

HEARING UNIT - File Copy

In the Matter of the Application :
of :
HAROLD R. RAININ :
for Revision or Refund of Personal :
Income Tax under Article 16 of the :
Tax Law for the year 1959 and of :
Unincorporated Business Taxes under :
Article 16-A of the Tax Law for the :
years 1958 and 1959 and Article 23 :
of the Tax Law for the year 1960 :

TAX Rev. & UBT
ART. 16, 16-A, 23 SECS. 386-j, 374
722

KEY WORDS _____

DETERMINATION _____

CROSS REFS. _____

CASE LAW CITATIONS _____

REMARKS _____

The taxpayer having filed applications pursuant to Tax Law Sections 386-j and 374 for revision of assessments issued on July 18, 1962, for personal income tax under Article 16 of the Tax Law for the year 1959 and of unincorporated business taxes under Article 16-A of the Tax Law for the years 1958 and 1959 and under Article 23 of the Tax Law for the year 1960; and such applications having been denied and a hearing having been demanded and duly held and the file of the Department pertaining to said assessments having been duly examined and considered,

The State Tax Commission hereby

FINDS:

1. The sole issues in the case are:
 - a. the allocation in each taxable year of income to an alleged office of the taxpayer outside the State;
 - b. the disallowance of certain deductions and the additions of certain amounts to unincorporated business income for the years 1958 and 1959 and;
 - c. the disallowance of certain deductions and the additions of certain amounts to personal income for the year 1959.

2. The assessments for 1958 and 1959 found as follows:

For the year 1958, the taxpayer overstated travel expenses by \$1,000.00 and depreciation by \$151.41. For the year 1959, the

taxpayer overstated expenses for travel in the amount of \$2,500.00 and depreciation in the amount of \$151.41 and further understated income from royalties in the amount of \$350.00. Also for 1959 the taxpayer overstated charitable contributions and medical expenses in the amounts of \$604.85 and \$573.37, respectively. The taxpayer failed to produce any evidence, other than his own denials, to contradict these portions of such assessments.

3. The taxpayer filed New York State Unincorporated Business Tax returns for the years in question and allocated the following portions of his income to an office allegedly maintained in Kearney, New Jersey: 1958, 19.89%; 1959, 23.55%; 1960, 19.63%.

4. The taxpayer together with his wife was engaged in the business of the rental of medical equipment under the name of Enurtone Co. during the four years, 1958 through 1961. The principal office of this business was located in Corona, Queens County, New York.

5. The taxpayer, as Enurtone Co., was a franchised dealer of Enurtone Co. of San Francisco for the area of New York, New Jersey and part of Connecticut.

6. Taxpayer employs, as a representative, a Mr. Harold Casell who resides in Kearney, New Jersey. Mr. Casell's duties include the servicing and maintenance of taxpayer's equipment located at homes of its New Jersey customers or at other locations in New Jersey.

7. Taxpayer leased 320 pieces of equipment from Enurtone of California, 80 of which were used with respect to its New Jersey business. Of these 80 pieces, 60 would generally be in the homes of customers, a few (less than 12) would be in New York for major repairs and the remainder would be "in transit" or at a location in New Jersey, usually the home of Mr. Casell, for minor repairs.

8. Taxpayer paid unemployment insurance taxes to New Jersey from 1958 through 1961, and disability benefits had been paid to

Mr. Casell by New Jersey. Taxpayer does not withhold New York State or City income taxes on the compensation of Mr. Casell.

9. Taxpayer maintains two telephones in connection with its business in the State of New Jersey. One is an unlisted phone at the Kearney, New Jersey, residence of Mr. Casell and is used for communications between Mr. Casell and the principal office of the company in Corona, Queens, and for calls by Mr. Casell to customers. The other phone is known as a foreign exchange line, serviced by New Jersey Bell Telephone Co. and bears a listed New Jersey exchange number, although the only phone on this line is located at Corona, Queens. This phone number is used by customers in calling the company. These callers are told that Mr. Casell will call them back, and the message is transmitted to Mr. Casell over the unlisted line of Mr. Casell.

Upon the foregoing findings and all the evidence in the case,
The State Tax Commission hereby

DETERMINES:

A. The taxpayer holds itself out as having an office in New Jersey, some of its goods are actually stored in New Jersey, and an employee is present in New Jersey to receive communications from customers.

B. The taxpayer failed to carry the burden of proof with respect to the disallowance of deductions and additions to income for 1958 and 1959, as stated in paragraph two.

C. The notices of assessment for 1958 and 1959 are erroneous in part and are affirmed in part and are revised to be: for 1958, \$15.67; and for 1959, \$24.47 for personal income tax and \$207.81 for unincorporated business tax and such amounts are due together with such interest and statutory charges, if any, as may be lawfully due, pursuant to Tax Law Sections 376 and 377.

D. The notice of assessment for 1960 is erroneous in its entirety and is cancelled in full.

DATED: Albany, New York
May 25, 1970

STATE TAX COMMISSION

Norman Gallivan
COMMISSIONER

Bruce M. ...
COMMISSIONER

Milton Koenig
COMMISSIONER