

Income Tax Determinations
BUREAU OF LAW

A-2

MEMORANDUM

Thomas, Lowell

TO: Commissioners Murphy, Palestin and Macduff

FROM: E. H. Best, Counsel

SUBJECT: LOWELL THOMAS

Articles 16 and 16-A of the Tax Law
for the Years 1955, 1956 and 1957

The issue raised herein is whether or not the income of the taxpayer derived from various activities in the communicative arts is subject to the unincorporated business tax.

The facts herein are more fully set forth in a memorandum from Mr. Gifford, the Hearing Officer, dated June 28, 1954. The record discloses that the taxpayer received income from various sources during the years involved including that of newscasting which constituted more than 80% of the taxpayer's income during such years. Other income producing activities for such years included commercial endorsements and narrations on film for private industrial firms. However, the net income derived from such activities was not sufficient to result in the imposition of any unincorporated business tax. Other income producing activities included the writing of specialized articles during the year 1955, and movie production and directing during the year 1957, which latter activities were conducted entirely outside of the State of New York. Mr. Gifford is of the opinion that the taxpayer's writings and movie directing activities are exempt professions and that the production of movies outside of the State of New York would not subject the income derived from movie-producing to the New York State unincorporated business tax. I agree.

The primary question, therefore, is whether or not the taxpayer's activities as a news commentator on radio can be deemed a profession which is also exempt from the unincorporated business tax. The Hearing Officer is of the opinion that it is so exempt on the grounds that the taxpayer's remarks did not include any commercial advertising and were not limited to a mere recital of the news, but rather eloquently expressed his editorial views in a notable literary and audible form. It is clear that the taxpayer's broadcasts incorporated the experiences gained through travel and personal interviews.

It is to be noted that although the taxpayer attempted to show his educational background and urged that more and more colleges are giving courses in the communicating arts, including

broadcasting, there is nothing in the record to show that a long course of specialized study is required in the practice of newscasting. If a professional exemption exists, it must be on other grounds. I believe that newscasting may be deemed an exempt activity because of its fundamental similarity on the one hand to acting a performing art, and the other to editorial writing and lecturing. The issue of whether or not a person who merely reads the news straight from a ticker tape is a professional is not in question here, and there is no need to determine whether or not such activities are exempt. However, it is to be born in mind that such persons are usually salaried. On the other hand, if persons are hired on an independent contractual relationship to broadcast current events, the basis of securing such individual is generally the reputation of the individual for eloquence of expression or his individual ability to comment and analyze. Therefore, even if Mr. Thomas's news recital did not include his own analysis of such news events, his eloquence in reciting such news events can be deemed a performing art. On the other hand it is evident that the taxpayer's own news commentary and interpretation and interjection of personal experiences results in the creation of composition, which if written and published in newspapers and periodicals would be exempt as a literary art or if delivered in the form of lectures in a lecture hall would also be exempt. The fact that, here, radio is the means of communication should not make a difference. Like the lecturer or the writer, the function of both which is to entertain or instruct the newscaster can be deemed engaged in a similar occupation, the income from which is exempt from the unincorporated business tax.

I, therefore, concur with the Hearing Officer's opinion that the taxpayer's activities are exempt. Kindly return the file after disposition.

/s/

E. H. BEST

Counsel

MS:ca

Enc.

September 24, 1965

STATE OF NEW YORK

STATE TAX COMMISSION

IN THE MATTER OF THE APPLICATIONS OF

LOWELL THOMAS

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

Lowell Thomas, having filed Applications for Revision or Refund of unincorporated business taxes assessed under Article 16-A of the Tax Law, and a hearing having been held in connection therewith on March 3, 1964, at the office of the State Tax Commission, 80 Centre Street, New York, N. Y., before Laurence S. Gifford, Hearing Officer, of the Department of Taxation and Finance, at which hearing the taxpayer appeared personally and testified, being represented by the firm of Hall, Casey, Dickler & Howley, Gerald Dickler, of counsel, 122 East 42nd Street, New York 17, N. Y., and the record having been duly examined and considered,

The State Tax Commission hereby

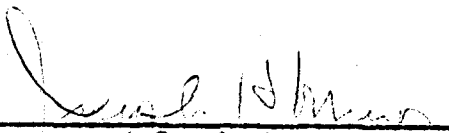
DETERMINES:

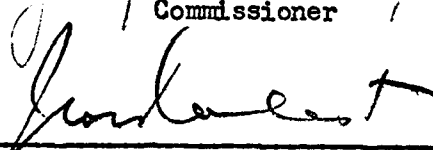
That the taxpayer's activities during the above years as a newscaster, as an author, and as a movie director constituted the practicing of a profession within the meaning and intent of Section 386 of Article 16-A of the Tax Law; that since the income of the taxpayer from these activities during such periods was derived from the personal services actually rendered by him without the material use of capital, his income therefrom is exempt from the New York State unincorporated business tax; that the income of the taxpayer as a movie producer during the above years is exempt from the unincorporated business tax as such income was earned without the State of New York; that accordingly the unincorporated business taxes levied on such income (as set forth in the margin)

are not legally due and owing and should be cancelled and IT IS SO ORDERED.

Dated: Albany, N. Y., November 19 1964⁵.

THE STATE TAX COMMISSION


Commissioner


Commissioner


Commissioner

<u>Year</u>	<u>Assessment No.</u>	<u>Unincorporated Business Tax</u>
1955	B-586962	\$5,021.39
1956	B-586963	\$4,871.23
1957	B-846522	\$5,598.94

The 1955 and 1956 assessment notices included additional personal income taxes which were not contested and are not here at issue.