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MEMORANDUM

Income Tax Determination
A-Z
Sommerfeld, William and
Margaret

TO: Commissioners Murphy, Palestine & Macduff
FROM: Solomon Sles, Hearing Officer
SUBJECT: WILLIAM SOMMERFELD & MARGARET SOMMERFELD, his wife

1954 Assessment #B-412815
1954 Assessment #B-570584
1955 Assessment #B-570585

Article 16 and 16-A

A hearing with reference to the above matter was held before me at 80 Centre Street, New York, N.Y. on November 12, 1964. The appearances and the evidence produced were as shown in the stenographic minutes and exhibits submitted herewith.

The issue involved herein is whether the occupational activities reported on the joint income tax returns filed for the years 1954 and 1955 constitute the practice of a profession within the meaning of §386, Article 16-A of the Tax Law.

The income reported by the taxpayer Margaret Sommerfeld during the years 1954 and 1955 consisted of services rendered by her as a fashion artist for several retail stores and advertising agencies and to one magazine publisher. Such activities were carried on wholly from a studio maintained by the aforementioned taxpayer at 183 East 64th Street, New York, N.Y. Capital was not a material factor in the production of income from the activities described and more than 80% of the gross income from said activities was derived from personal services rendered by the taxpayer Margaret Sommerfeld. The services rendered by the aforementioned taxpayer to a magazine publisher consisted of the execution of art work for use in illustrating magazine editorial material. The amounts of income derived from said services amounted to \$1300.00 in 1954 and \$2275.00 for the year 1955.

The taxpayer, Margaret Sommerfeld, has studied for a number of years at numerous schools and colleges such as State Teacher's College, the National Academy of Design and the Art Student's League, New York, N.Y. The taxpayer has taught art and served as trustee of various organizations such as Cambridge School of Design and the Washington Art Association.

It is to be noted that prior determinations were issued after formal hearing for the years 1951 and 1952 holding that the taxpayer's income derived as a fashion artist for business and commercial purposes constituted the carrying on of an unincorporated business and not that of the profession of artist.

I am of the opinion that the activities of the taxpayer as a fashion artist for advertising agencies and retail stores con-

TO: Commissioners Murphy, Palestine & Macduff Page 2
RE: WILLIAM SOMMERFELD & MARGARET SOMMERFELD, his wife

stitutes commercial art and, therefore, the carrying on of an unincorporated business in accordance with decisions in the cases of Application of Wilson, 282 App. Div. 1099 and Application of White, 11 A.D. 2d 874, Appeal Denied, 11 A.D. 2d 964, aff'd, 9 N.Y. 2d 931. However, I am of the further opinion that the income of the taxpayer Margaret Sommerfeld to the extent of the execution of illustrations for purposes other than that used in business or commercial advertisements and more particularly that rendered to magazine publishers consisted of the execution of art work for use in illustrating magazine editorial material in the sums of \$1300.00 and \$2275.00 for the years 1954 and 1955, respectively, should be exempt and excluded from the computation of unincorporated business tax for said years as set forth in the accompanying proposed determination.

For the reasons stated above, I recommend that the determination of the Tax Commission in the above matter be substantially in the form submitted herewith.

JAN 17 1966

SOLOMON SIES

Hearing Officer

/s/

MARTIN SCHAPIRO

Approved.

/s/

SAUL HECKELMAN

Approved.

SA/te

**STATE OF NEW YORK
STATE TAX COMMISSION**

IN THE MATTER OF THE APPLICATION

OF

**WILLIAM SUMMERFELD and MARGARET
SUMMERFELD, his wife**

**FOR REVISION OR REFUND OF PERSONAL
INCOME TAXES UNDER ARTICLE 16, AND
UNINCORPORATED BUSINESS TAXES UNDER
ARTICLE 16-A OF THE TAX LAW FOR THE
YEARS 1974 AND 1975.**

The taxpayers herein, having filed applications for revision or refund of personal income taxes under Article 16 of the Tax Law and unincorporated business taxes under Article 16-A of the Tax Law for the years 1974 and 1975, and a hearing having been held in connection therewith at the office of the State Tax Commission at 80 Centre Street, New York, N.Y. on the 12th day of November, 1964, before Solomon Sles, Hearing Officer of the Department of Taxation and Finance at which hearing the taxpayer appeared personally, testimony having been taken and the matter having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That the taxpayers herein filed joint New York State income tax returns for the years 1974 and 1975 in which the taxpayer, Margaret Summerfeld, reported income on Schedule A as a fashion artist; that the taxpayer Margaret Summerfeld did not file any unincorporated business tax returns on the ground that she claimed exemption as a "professional"; that on April 7, 1958, the Department of Taxation and Finance made an additional assessment against the taxpayers for the year 1974 (Assessment No. B-12815) holding that the business activities reported by the taxpayer Margaret Summerfeld constituted the carrying on of an unincorporated business and that the net income derived therefrom was subject to unincorporated business tax; that on March 19, 1979, the Department of Taxation and Finance made an additional assessment against the taxpayers for the

year 1955 (Assessment #B-570585) disallowing a portion of business expenses as personal, estimated, unsubstantiated and in excess of the amount considered ordinary and necessary thereby imposing additional normal tax in the sum of \$249.90 and further imposing unincorporated business tax in the sum of \$1,271.76 upon the ground that the activities of the taxpayer, Margaret Sommerfeld, constituted the carrying on of an unincorporated business; that the taxpayers are not contesting the additional assessments of normal tax and are not contesting the disallowance of business tax; that the taxpayer Margaret Sommerfeld contends that she is not subject to unincorporated business tax.

(2) That the income reported by the taxpayer, Margaret Sommerfeld, during the years 1954 and 1955 consisted of services rendered by her as a fashion artist for several retail stores and advertising agencies and to one magazine publisher; that such activities were carried on wholly from a studio maintained by the taxpayer at 183 East 64th Street, New York, N.Y.; that capital was not a material factor in the production of income from the activities described herein; that more than 80% of the gross income from said activities was derived from personal services rendered by the taxpayer Margaret Sommerfeld; that the services rendered by the taxpayer Margaret Sommerfeld, to retail department stores and advertising agencies consisting of the execution of drawings used for commercial advertising purposes only constituted commercial art and did not constitute the practice of a profession exempt from unincorporated business tax; that the services rendered by the taxpayer to a magazine publisher consisting of the execution of art work for use in illustrating magazine editorial material constituted the practice of the profession of art, exempt from unincorporated business tax.

(3) That the taxpayer, Margaret Sommerfeld, has studied art for a number of years at numerous schools and colleges such as State Teacher's College, the National Academy of Design and the Art Student's League, New York, N.Y.; that the taxpayer has taught art and served as trustee of various organizations such as Cambridge School of Design and the Washington Art Association.

(4) That an analysis of the gross business income of the tax-

payer, Margaret Sommerfeld, shows that the income from art work executed for retail stores and advertising agencies for use in business or commercial advertisements amounted to \$31,213.19 in 1954 and to \$33,206.94 in 1955; that the income of the taxpayer Margaret Sommerfeld from art work executed for purposes other than use in business or commercial advertisements amounted to \$1300.00 in 1954 and \$2255.00 in 1955.

Based upon the foregoing findings and all of the evidence presented herein, the State Tax Commission hereby

DETERMINE:

(A) That the activities of the taxpayer, Margaret Sommerfeld, as a fashion artist constituted the practice of an exempt profession within the meaning of section 386, Article 16-A of the Tax Law only to the extent of the execution of illustrations for purposes other than that used in business or commercial advertisements and more particularly that rendered to magazine publishers consisting of the execution of art work for use in illustrating magazine editorial material; that the activities of the taxpayer as a fashion artist in the execution of illustrations in the use of business or commercial advertising for retail department stores and advertising agencies constituted the carrying on of an unincorporated business rather than the exempt practice of a profession in accordance with section 386, Article 16-A of the Tax Law.

(B) That the tax liability of the taxpayer, Margaret Sommerfeld, for the years 1954 and 1955 is hereby re-computed as follows:

	1954	1955
Adjusted total business income	\$47,215.25	\$44,105.00
Less Expenses	<u>11,743.72</u>	<u>10,807.32</u>
	\$35,471.53	\$33,297.61
Less Exempt Income	<u>1,300.00</u>	<u>2,255.00</u>
Adjusted business income subject to unincorporated business tax	\$34,171.53	\$31,042.61
Allowances for Services	\$5,000.00	\$5000.00
Statutory Exemption	\$5,000.00	\$5000.00
	<u>\$10,000.00</u>	<u>\$10,000.00</u>

	1954	1955
Adjusted balance subject to unincorporated business tax	\$24,171.53	\$21,964.41
Unincorporated Business Tax at 4%	966.86	862.98
Additional normal tax	_____	_____222.22
TOTAL	\$ 966.86	\$ 1,103.48

plus additional statutory charges

(C) That the assessments for the years 1954 and 1955 (Assessment Nos. E-570584 and E-570585, respectively) except as modified in accordance with Determination (B) above are correct and that the same do not include any other tax or other charges which could not have been lawfully demanded and that the taxpayers' applications for revision or refund for the years 1954 and 1955 except as modified above be and the same are hereby denied.

DATED: Albany, New York, on the 24th day of March, 1946.

STATE TAX COMMISSION

/s/

JOSEPH H. MURPHY
President

/s/

IRA J. PALESTIN
Commissioner

/s/

JAMES R. MACDUFF
Commissioner