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Income Tax Determinations A-2
Swiatovy, Arthur and
Dorothy

TO: Commissioners Murphy and Macduff

FROM: Francis V. Dow, Hearing Officer

SUBJECT: Arthur & Dorothy Swiatovy, application for revision or refund of an assessment of personal income taxes under Article 16 and unincorporated business taxes under Article 16-A of the Tax Law for the year 1959

A hearing with reference to the above matter was held before me at 80 Centre Street, New York, New York, on October 5, 1966. The appearances and the evidence produced were as shown in the stenographic minutes submitted herewith.

The issue involved herein is whether the occupational activities of the taxpayer constitute the practice of a profession under the provisions of section 386 of the Tax Law.

A notice of additional assessment dated January 5, 1962 (Assessment No. BTF-236604) was issued disallowing business expenses, contributions and medical expenses in the amount of \$1,788.14 as unsubstantiated to conform with the Federal audit of the taxpayers' return and holding that his business activities were subject to unincorporated business tax. The taxpayer did not offer any proof to substantiate the deductions.

The taxpayer was a self-employed airbrush artist who was hired by advertising agencies and public relations organizations. His work consisted of the use of an airbrush for advertising to draw pictures, backgrounds, enhance photographs, correct colors, add lettering and assemble advertising layouts for their publication in newspapers, magazines and billboards, and their use in television commercials. His income was derived from personal services and capital was not a material income producing factor. The taxpayer contended that he was practicing a profession.

I am of the opinion that the activities of the taxpayer were those of a commercial artist and therefore were subject to the unincorporated business tax in accordance with the decisions in

the cases of Application of Wilson v. Bates, 282 App. Div. 1099 and Application of White v. Murphy, 11 A D 2d 854, Appeal Denied, 11 A D 2d 964, aff'd 9 N Y 2d 995.

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.

Francis V. Law
Hearing Officer

November 22, 1966

FVD:kon

Enc.

Martin Schapiro
Approved

Saul Fishman
Approved

(NOV. 28, 1966)

STATE OF NEW YORK
STATE TAX COMMISSION

IN THE MATTER OF THE APPLICATION

OF

ARTHUR & DOROTHY SWIATOVY

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 YEAR 1959

The taxpayer herein having filed an application 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 year 1959, and a hearing having been held in connection therewith at the office of the State Tax Commission at 80 Centre Street, New York, New York on the 5th day of October, 1966 before Francis V. Dow, 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 filed a joint New York State income tax return for the year 1959 in which the taxpayer, Arthur Swiatovy, reported income on Schedule A as a commercial artist; that the taxpayers did not file an unincorporated business tax return; that on January 5, 1962, an additional assessment for the year 1959 (Assessment No. HTF-236604) was issued disallowing business expenses, contributions and medical expenses in the amount of \$1,786.14 as unsubstantiated to conform with the Federal audit of the taxpayers'

return and on the grounds that the activities reported by the taxpayer, Arthur Sviatovy, constituted the carrying on of an unincorporated business subject to unincorporated business tax and imposed additional tax in the amount of \$345.41.

(2) That the taxpayer failed to submit any proof or evidence to substantiate the business expenses, contributions or medical expenses disallowed.

(3) That the taxpayer, Arthur Sviatovy, attended art school for five years and served as an apprentice for five years under a professional airbrush artist; that he taught a course for two semesters in basic airbrush work at the New York School of Fine and Applied Arts; that he is not required to possess a college degree or a license to engage in his occupation.

(4) That the taxpayer is a self-employed commercial artist as conceded by him; that his work consisted of airbrush work used for advertising in television, newspapers, billboards and magazines and the assembling of various advertising units before publication commissioned by advertising agencies and public relation organizations.

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

DETERMINES:

(A) That the deductions claimed by the taxpayer for business expenses, contributions and medical expenses in the amount of \$1,788.14 were properly disallowed as unsubstantiated.

(B) That the activities of the taxpayer as a commercial artist constituted the carrying on of an unincorporated business and does not constitute the practice of an exempt profession

within the meaning of section 366 of the Tax Law. (Application of Wilson v. Eaton, 202 App. Div. 1099 and Application of White v. Murphy, 11 A D 2d 854, Appeal Denied, 11 A D 2d 964, aff'd 9 N Y 2d 995)

(C) That the assessment for additional taxes (Assessment No. NY-236604) for the year 1959 is affirmed; that such assessment is correct and does not include any other lawful charges which are not lawfully due and owing.

DATED: Albany, New York on this 6th day of December , 1966.

STATE TAX COMMISSION

/s/

JOSEPH H. MURPHY

~~PRESIDENT~~

/s/

JAMES R. MACDUFF

~~COMMISSIONER~~