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York, Herman H. -

Loretta H.

STATE OF NEW YORK

STATE TAX COMMISSION

IN THE MATTER OF THE PETITION

OF

HERMAN H. YORK  
AND  
LORETTA H. YORK

FOR A REDETERMINATION OF A DEFICIENCY  
OR FOR REFUND OF PERSONAL INCOME TAXES  
UNDER ARTICLE 22 OF THE TAX LAW AND  
UNINCORPORATED BUSINESS TAXES UNDER  
ARTICLE 23 OF THE TAX LAW FOR THE  
YEARS 1960 and 1961

See also:

Unincorp Bus. Tax  
Determination A-2  
Matern, Rudolph G.  
et al  
(4/11/68 - 5/28/68)

Taxpayers herein having filed a petition for redetermination of a deficiency or for refund of personal income taxes under Article 22 of the Tax Law and unincorporated business taxes under Article 23 of the Tax Law for the years 1960 and 1961 and hearings having been held in connection therewith at the office of the State Tax Commission at 80 Centre Street, New York, New York on February 8, 1967 and February 6, 1968 before Francis V. Dow, Hearing Officer of the Department of Taxation and Finance, at which hearings the taxpayer Herman H. York appeared and testified and was represented and the record having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That the taxpayer filed resident income tax returns for the years 1960 and 1961; that the taxpayers did not file unincorporated business tax returns for the years 1960 and 1961.

(2) That a statement of audit changes and notice of deficiency were issued for the years 1960 and 1961 (File number 6296878) on October 5, 1965 finding additional tax, penalty and interest due in the amount of \$1,607.57 on the basis that the taxpayers' income from the

sale of pre-designed one family resident building plans was subject to the unincorporated business tax and that entertainment, travel, Christmas expenses and gifts and association expenses were disallowed as personal and unsubstantiated.

(3) That the taxpayers did not contest the disallowance of entertainment, travel, Christmas expenses and gifts and association expenses and submitted no evidence to substantiate them.

(4) That the taxpayer Herman H. York is a licensed architect; that he prepared plans and specifications for one-family residences, copies of which he furnished to persons who ordered them by a number assigned to the plans or by a description of the house; that the taxpayer did no custom designing of houses; that no services were provided the persons who ordered the plans and specifications; that the plans were ordered by mail or by appearing personally at the taxpayers office; that charges were made for the plans which ranged from \$35 to \$45 for four sets; that ordinarily the taxpayer had no personal contact with the purchasers of the plans.

(5) That the orders for the stock plans were obtained as a result of publicity received in newspapers and magazines; that the taxpayer affixed his seal as an architect to the plans which he sold claiming that he became responsible for malpractice; that the taxpayer was unable to explain in what manner he was subject to any liability in connection with the sale of such stock plans.

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

**DECIDES:**

(A) That the sale of stock plans and specifications as set forth in finding (4) constitutes the carrying on an unincorporated

business, the income of which is subject to the unincorporated business tax, since such activities do not constitute the practice of a profession within the intent and meaning of section 702 subdivision (c) of the Tax Law.

(B) That the statement of audit changes and notice of deficiency for the years 1960 and 1961 (File number 6296878) are correct and lawfully due and owing together with interest and other charges and do not include any other taxes or charges which are not lawfully due and owing; that the taxpayers petition with respect to the years 1960 and 1961 be and the same is hereby denied.

Dated: Albany, New York this 28th day of May, 1968.

STATE TAX COMMISSION

/s/ JOSEPH H. MURPHY  
PRESIDENT

/s/ A. BRUCE MANLEY  
COMMISSIONER

/s/ SAMUEL E. LEPLER  
COMMISSIONER