

## BUREAU OF LAW

## MEMORANDUM

*Unincorp. Bus. Tax  
Determinations A-2  
Adler, Norbert*

TO: Commissioners Murphy and Macduff  
FROM: E. H. Best, Counsel  
SUBJECT: Norbert Adler: Application for revision or refund of unincorporated business taxes, under Article 16-A of the Tax Law for the year 1956

A hearing with reference to the above matter was held at the State Tax Commission office, State Campus, Albany, New York, on November 7, 1965. The appearances and the evidence produced were as shown in the stenographic minutes and exhibits submitted herewith.

The issue raised is whether the nature of work performed by the taxpayer for architects and engineers constituted the practice of a profession in accordance with section 386 of the Tax Law.

In 1947 the taxpayer established an advertising agency which continued until the year 1955 or 1956. During the year 1956 he was occupied in surveying and analyzing the professional practice of architects and engineers recommending ways and assisting them to make themselves and their services known to clients and to obtain commissions.

The taxpayer does not have a degree although he has had some formal education or training in marketing, communications and graphics which is helpful to him in his occupation. His occupational activities do not require any specialized knowledge of some department of learning. He maintains an office in his home furnished with some general office equipment and does not require assistants in his work.

I am of the opinion that this service rendered by the taxpayer is similar to that of a public relations consultant. This matter is analogous to the facts found in the determinations of Elizabeth M. Manning, dated January 28, 1964 and Ruth M. Allersmeyer, dated May 20, 1958. The copies of the memoranda in both matters are attached hereto.

/s/

E. H. BEST

COUNSEL

FD:lb

Encs.

September 14, 1966 (Sept. 23, 1966)

/s/

M. SCHAPIRO

APPROVED

/s/

S. HECKELMAN

APPROVED

**LAW BUREAU**

To Comm. Murphy

This has been prepared for  
two signatures as it was our understanding  
Comm. Palestini was to be on vacation  
during Sept.

M-75 (7-65)

From E. H. Best, Counsel

**STATE OF NEW YORK**

**STATE TAX COMMISSION**

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**IN THE MATTER OF THE APPLICATION OF**

**NORBERT ADLER**

**FOR REVISION OR REFUND OF UNINCORPORATED  
BUSINESS TAXES, UNDER ARTICLE 16-A OF  
THE TAX LAW FOR THE YEAR 1956**  
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The taxpayer, Norbert Adler, having duly filed an application for revision or refund of unincorporated business taxes assessed under Article 16-A of the Tax Law for the year 1956, and a hearing having been held in connection therewith on November 7, 1965 at the office of the State Tax Commission, State Campus, Albany, New York, at which hearing the taxpayer appeared in person and testified, and having been represented by counsel, and the record having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That tax returns under Article 16 and 16-A of the Tax Law were filed by the taxpayer for the year 1956; that an amended tax return was filed for that year in which the taxpayer claimed he was not subject to the unincorporated business tax; that thereafter an assessment was issued (Assessment No. B 591583) imposing unincorporated business taxes for the year 1956, on the ground that the net income of the taxpayer was derived from an excluded profession.

(2) That during the year 1956 the taxpayer's income was derived from services rendered to architects and engineers in assisting them to promote themselves and enhance their professions by making their firms and their services known to potential clients. This was accomplished by advising and guiding them as follows: establishing a list of possible prospects; formulating a program for contacting these possible prospects and making follow-up calls on them; preparing brochures setting forth the work the firm specializes in; assisting in obtaining a publicity writer to prepare news releases; preparing exhibits to be used at conventions; preparing script and securing slide

(2)

illustrations used in making their services known to their prospects; assisting in selection of stationery in creating a proper image of the firm; adopting a promotional budget and an accounting system to provide data on results of the promotional program.

(3) The taxpayer maintained an office in his home and was the only person responsible for the services performed and his income was obtained from these services.

(4) The taxpayer's activities require a knowledge of the principles of marketing, communications and graphics, but does not require either college degrees or licensing by the State of New York.

Upon the foregoing and all of the evidence presented herein the State Tax Commission hereby

**DETERMINES:**

(A) That although the taxpayer's knowledge and skills were useful in the conduct of his activities, his occupation did not require any prolonged courses of study or training for the production of his income, and consequently did not constitute the practice of a profession; and that his services dealt with the conduct of the business aspects of the practice of architecture and engineering and the promotion of income rather than the application of a separately developed art or science.

(B) That the State Tax Commission properly disallowed the claim of the taxpayer that his income was derived from this practice of a profession excluded by the provisions of section 386 of the Tax Law, and

(C) That the additional taxes assessed against the taxpayer for the year 1956 were properly and timely issued; that the additional taxes assessed against the taxpayer for such year were correct and legally due and owing and that the taxpayer is not entitled to any further revision or refund of such taxes for the year 1956.

Dated: Albany, New York, this 23rd day of Sept., 1966.

**STATE TAX COMMISSION**

/s/

JOSEPH H. MURPHY  
**PRESIDENT**

/s/

JAMES R. MACDUFF  
**COMMISSIONER**