

BUREAU OF LAW

MEMORANDUM

Unincorp. Bus Tax Determinations A-Z
Brooks Associates

TO: Commissioners Murphy, Palestin and Macduff

FROM: Francis X. Boylan

SUBJECT: Brooks Associates, a Partnership

Article 16-A, 1957 and 1959

A hearing in the above matter was held before me at 80 Centre Street, New York, New York on May 13, 1964. The taxpayers did not appear but they were represented by a certified public accountant who testified. The record of testimony and the exhibits are submitted herewith.

The question here is whether the partnership was entitled to a professional exemption on the theory that it was engaged in a specialized kind of accountancy and so was professionally exempt. The partnership consisted of a man and his wife. The wife had no professional background. The man had a background in the field of accountancy and according to a "resume," submitted in evidence, had a degree of Bachelor of Commercial Sciences from New York University. He had had many years of service with the Air Force Procurement Division and apparently had considerable expertise in the field of government regulations and manuals that guided Air Force auditors in their decisions passing on costs, claimed to be payable under contracts with the Air Force in the general nature of cost-plus contracts. The conclusion of the proposed determination is that the services he rendered for his customers, which were of a quasi-legal and a quasi-accountancy nature, were not rendered in the practice of the profession of accountancy. The assessments of unincorporated business tax are therefore upheld.

The partnership did business from offices at 383 Lafayette Street in New York, New York. The two returns described the business as "management consultants," and as "consulting."

In a resume submitted as an exhibit (#1) the taxpayer named a number of firms as his customers and he did have contracts with at least two of them, Melpar Inc., of Falls Church, Virginia, and Morey Machinery Co., manufacturers of machine tools, at 383 Lafayette Street, New York, New York. These companies supplied equipment to the Air Force which, in the case of Melpar

Inc., was in the field of electronic devices: weaponry, radar, signaling devices, etc.

Pursuant to their contracts justification for costs recited in claims for payment had to be audited by government auditors. The taxpayer was consulted by his customers on the renegotiation of such contracts and on the justification for costs claimed payable under such contracts. He advised on the format of the accountancy presentation of the claims in the light of his knowledge of the regulations and of the auditors' practices, and he edited and oversaw the appeals taken for adverse rules by the government auditors (taxpayer's exhibits #4 and 4a (Morey), #5 and #6 (Melpar)). The basic statement of Melpar Inc. (taxpayer's exhibit #6) does not appear to be the work of the taxpayer partnership, but probably he did have a hand in the format of the presentation.

Under Tax Law section 386 the practice of accountancy has been recognized as one of the "other" professions entitled to an exemption subject to the further statutory conditions. The question, therefore, is whether the services rendered by the partnership here are to be regarded as the practice of a specialized branch of accountancy.

The duties of a public accountant as they are commonly understood are to set up and oversee the bookkeeping system of his clients, to abstract financial statements from the books for various purposes, and, to a greater or less extent, to make recommendations for the conduct of the business, deriving from his knowledge of the business's financial condition. The taxpayer company performed none of these duties for its customers except that it did give advice on the furtherance of the customer's business. The advice, however, did not derive from any close knowledge of the customer's financial condition, but rather from the expertise he had on government auditing systems, and of the practices of the government auditors who passed on claims made under such contracts.

Except in the case of accountancy, if it be regarded as rather directly related to the furtherance of business ends, other claims for professional exemption made by management consultants and industrial engineers, etc. have been disallowed on the rationale that such services were too closely related to the conduct of the business proper and did not sufficiently reflect professional knowledge in a distinctly separate and special science. So the services of specialists in all the following fields have

been denied professional exemption: economist, textile technologist, analyst conducting surveys of business and government administration, management and industrial engineer, actuary, and labor relations consultant. (Application of Backman (1952) 279 App. Div. 115, aff'd 305 N.Y. 839; Matter of Schmidt v. Bates (1953) 282 App. Div. 980, app. den. 283 A D 677; McCormick v. Bragalini (1959) 8 A D 2d 885; Boos v. Bragalini (1956) 2 A D 2d 639, app. den. 2 A D 2d 716; Kornes v. Murphy (1959) 9 A D 2d 1003, app. den. 10 A D 2d 777; Herman v. Murphy (1961) 14 A D 2d 473)

The taxpayer's activities were more largely quasi-legal than they were quasi-accountancy and the essence of his contributions derived from his expert knowledge of regulations by which government auditors were to be guided. In this area, however, it was held that a licensed practitioner before the Interstate Commerce Commission who was not a lawyer, was not engaged in the practice of a profession; and neither was a custom house broker who had expert knowledge of custom regulations and import duties. (Follock v. Mealey (1943) 40 N.Y.S. 2d 67; People ex rel. Towers v. State Tax Commission (1940) 282 N.Y. 407)

The fact that the taxpayer's wife who was not a professional person was a partner with him probably is not of great importance in the situation here. The taxpayer virtually acknowledges that he did not regard himself as engaged in the practice of public accountancy and the circumstances of a non-professional partner only emphasizes this. Nevertheless had the taxpayer rendered skilled accountancy services, as such, in a specialized field, a closer question would be presented. The services that he did render were too far removed from the practice of accountancy to qualify for the exemption, it is held.

For these reasons it is my recommendation that the determination be substantially in the form of the proposed determination submitted.

September 13, 1965

Hearing Officer

FXB:pad

Approved

Approved

STATE OF NEW YORK

STATE TAX COMMISSION

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IN THE MATTER OF THE APPLICATION OF :

WILLIAM H. BROOKS :

and

BEATRICE BROOKS :

Individually and as co-partners doing :
business under the name and style of Brooks
Associates, for revision or refund of :
unincorporated business taxes under Article
16-A of Tax Law for the years 1957 and :
1959 :

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The State Tax Commission having assessed unincorporated business taxes under Article 16-A of Tax Law against the above named taxpayer on their returns for the years 1957 and 1959 and the taxpayers having filed applications for revision or refund thereof and such applications having been initially denied; and a formal hearing having been held pursuant to demand therefor on May 13, 1964, at the offices of the State Tax Commission, 80 Centre Street, New York, New York, before Francis X. Boylan, Hearing Officer; and the taxpayer having been represented by Hyman Weiner, CPA, of New York, New York; and testimony having been taken; after due deliberation

The State Tax Commission hereby finds that:

(1) The Department of Taxation and Finance by notices of additional assessments S-626104 and S-626105 both dated December 12, 1960, assessed unincorporated business taxes for the year 1957 in the amount of \$42.99, and for the year 1959, in the amount of \$81.41. The taxpayer's application for revision or refund asserted that the earnings subject to tax were derived from the practice of accountancy and were exempt pursuant to provisions of law as

professional income.

(2) The taxpayers, William H. Brooks and Beatrice Brooks, his wife, in the years under consideration, 1957 and 1959, as partners received the income reported in the returns for the said years, from services described in the two said returns as "management consultants" and as "consulting". The business was conducted at New York, New York.

(3) The taxpayer Beatrice Brooks concededly was not professionally qualified as an accountant and did not herself engage in the practice of accountancy in her duties in the partnership. The taxpayer, William Brooks, had some advanced education and reportedly had a degree of Bachelor of Commercial Science from New York University. He was not a certified public accountant. Prior to the formation of the partnership of Brooks Associates in 1957, he was for many years a civilian employee of the United States Air Force Procurement Division, where he examined or audited claims for payment made under procurement contracts entered into by the Air Force.

(4) The partnership's income was derived from fees paid to the partnership by manufacturing and designing corporations which had contracts with the United States Air Force to supply electronic or other equipment, and the taxpayer's company advised on the format of the presentation of claims for payment made by his customers under such government contracts, and on appeals by his customers from disallowances by government auditors of such claims for payment, the advice given reflecting expert knowledge of certain regulations that governed the determinations to be made by the government auditors, and of the practices and procedures which obtained on such reviews and audits of such contracts, and of

claims made pursuant to them.

(5) That the services rendered by the partnership, of a quasi-legal and quasi-accountancy nature, as it is found, were quite directly related to the furtherance of the businesses of the customers and were an incident to such businesses, and were not rendered in the practice of the profession of accountancy.

Upon the foregoing evidence the State Tax Commission hereby

DETERMINE:

(A) That the taxpayers in partnership conducted an unincorporated business in the years under consideration, 1957 and 1959, and the gross income therefrom was subject to unincorporated business tax and was not derived wholly or in part from the practice of a profession within the meaning of such term in Tax Law section 306 so as to be exempt from such tax.

(B) That accordingly the applications for revision or refund of the additional assessments described in paragraph 1 hereof for the years 1957 and 1959 are denied and said assessments are affirmed in the amounts of \$62.99 and \$241.41 as of the dates thereof, subject to interest, and subject to penalties if any.

And it is so ORDERED.

Dated: Albany, New York

this 18th day of October, 1960.

STATE TAX COMMISSION

/s/

JOSEPH H. MURPHY
President

/s/

IRA J. PALESTIN
Commissioner

/s/

JAMES R. MACDUFF
Commissioner

