

*Unincorp. Bus. Tax
Determinations A-Z*

STATE OF NEW YORK
STATE TAX COMMISSION

*Chester & Levine
(Randolph) (Herman)*

IN THE MATTER OF THE APPLICATIONS

OF

RANDOLPH S. CHESTER and HERMAN
LEVINE, individually and as co-
partners d/b/a the firm name and
style of:

CHESTER and LEVINE

FOR REVISION OR REFUND OF UNINCORPORATED
BUSINESS TAXES UNDER ARTICLE 16-A OF THE
TAX LAW FOR THE YEARS 1956 AND 1957.

*X - ref
Unincorp. Bus. Tax
Determinations A-Z
Shapiro, Meyer
(9/10/65 - 10/18/65)
1965*

The taxpayers, Randolph S. Chester and Herman Levine,
having filed applications for revision or refund of unincorpo-
rated business taxes under Article 16-A of the Tax Law for the
years 1956 and 1957, and a hearing having been held in connection
therewith at the office of the State Tax Commission, 80 Centre
Street, New York, N.Y. on December 5, 1963 before Martin Schapiro,
Hearing Officer of the Department of Taxation and Finance, at
which hearing the taxpayers appeared personally and were
represented by Edwin S. Lipson, Esq., by Paul S. Lipson, Esq.,
Of Counsel, and the matter having been duly examined and
considered,

The State Tax Commission hereby finds:

(1) That the taxpayers filed partnership returns for
the years 1956 and 1957 without computing unincorporated business
taxes or paying the same and setting forth in such returns that
the partnership was engaged in an engineering structural steel
detailing business and that the same was an exempt profession;
that on February 17, 1960 assessments were issued (Assessment Nos.
B-742103 and B-742104 for the years 1956 and 1957, respectively)
assessing unincorporated business taxes on the ground that the

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activities of the co-partnership constituted the carrying on of an unincorporated business subject to tax.

(2) That during the years involved, the taxpayers were engaged as partners in the activity of structural steel detailing work; that the taxpayers maintained an office where they employed a number of draftsmen in connection with such work; that the taxpayer Reinhold E. Chester had attended and graduated from an engineering high school and junior college in Germany; that he did not receive any baccalaureate degree but had taken specialized courses in structural engineering; that Herman Levine was a graduate of New York University having received the degree of Bachelor of Civil Engineering; that both individuals belonged to an association known as the Institute of Steel Detailers; that such institute does not require any degree or license as a condition precedent to the admission of its members, but merely requires that the members be in such business; that neither taxpayer was licensed to practice professional engineering in this State nor any other state.

(3) That the activities of the co-partnership during the years in question involving structural steel detailing on behalf of steel fabricators consisted of the taxpayers receiving a line diagram prepared by an architect or professional engineer and was required to check the drawing and calculate all the stresses and strains, using engineering principles, data and types and indicate upon a blue print the connection of one piece of steel with another; that the drawings are instructions to the fabricating shop indicating among other things, the sizes, shapes and quantities of the material, where holes are to be punched, where rivets are to be made and where welding is to be done; that they are technical vehicles of instructions and usually include bills of materials, indices,

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detail sheets and erection plans; that the taxpayers had no authority to change or modify any plans submitted by the engineer or architect but that same required the final approval of such engineer or architect.

(4) That more than 80% of the gross income of the respective taxpayer is derived from personal services actually rendered or supervised by the individual and capital is not an income-producing factor.

(5) Section 7202 (1) of the Education Law provides, in part, as follows:

" * * * It shall be unlawful for any person to practice or to offer to practice professional engineering or land surveying in this state or to use the title engineer or surveyor or any other title, sign, card or device in such manner as to tend to convey the impression that such person is practicing professional engineering or land surveying or is a professional engineer or land surveyor, unless such person is duly licensed under the provisions of this article. * * "

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

DETERMINES:

(A) That during the years 1956 and 1957 the taxpayers' activities which consisted of structural steel detailing, more fully described in Finding No. (3) above, although constituting a skill employing a knowledge of engineering principles, did not constitute the practice of engineering or any other profession exempt from the imposition of unincorporated business taxes in accordance with Section 306 of the Tax Law; that the taxpayers' activities during the years 1956 and 1957 constituted the carrying on of an unincorporated business within the State of New York and that their income derived therefrom was subject to the imposition of unincorporated business tax in accordance with the intent and meaning of Section 306, Article 16-A of the Tax Law.

(B) That the unlicensed activities performed by them

to the extent that the same consists of work sometimes performed by licensed professional engineers, it is conducted as a profession as authorized by the Education Law of the State of New York and consequently does not constitute the practice of a profession within the intent and meaning of Section 386 of the Tax Law.

(C) That, accordingly, the assessments for the years 1956 and 1957 (Assessment Nos. B-7-2103 and B-7-2104) are correct; that said assessments do not include any taxes or other charges which could not have been lawfully demanded and that the applications for revision or refund filed with respect to said assessments be and the same are hereby denied.

DATED: Albany, New York, this 18th day of October , 1965.

STATE TAX COMMISSION

/s/

JOSEPH H. MURPHY

COMMISSIONER

/s/

IRA J. PALESTIN

COMMISSIONER

/s/

JAMES R. MACDUFF

COMMISSIONER