

BUREAU OF LAW

MEMORANDUM

TO: Commissioners Murphy, Palestin & Macduff
FROM: Francis Kelliher, Assistant Director
SUBJECT: QUENTIN & JEANNE FIORE

Fiscal Year ending 3/31/58
Assessment No. B-688272

Article 16-A

Formal Hearing

The issue involved herein is whether the activities of the taxpayers constituted a recognized profession exempt from the imposition of unincorporated business taxes in accordance with Section 386 of the Tax Law.

A formal hearing was held on May 29, 1964 at which the taxpayers were represented by their accountant, who requested an adjournment for the purpose of submitting additional information. Thereafter, a letter was sent to the accountant advising him that a hearing would be scheduled during the week of September 14, 1964. There was no response to said letter. The hearing officer thereafter mailed a hearing notice on September 18, 1964 to the taxpayers and their accountant scheduling a continued formal hearing for October 13, 1964. The taxpayers and their accountant defaulted in appearance at said scheduled hearing. Thereafter, a letter was sent to the taxpayers and their accountant dated October 20, 1964 advising them of their default and affording them an opportunity to request a re-scheduled hearing but no response was received to said letter.

It appears from the file that in prior years, the taxpayers were active as letterers. It is contended by the taxpayers that the income received by them from magazines such as "Harper's" and "Seventeen" was for the creation and supervision of lettering which appeared in the advertisements of said magazines; that the taxpayer, Quentin Fiore, was consulted in "lay-out" of design of about 20% of the ads that appeared. It further appears from the file that the taxpayers are commercial artists.

The hearing officer is of the opinion that the taxpayers have failed to establish that their activities constituted anything more than commercial art and as such did not constitute a recognized profession for income tax purposes within the intent and meaning of Section 386, Article 16-A of the Tax Law on the basis of Matter of

TO: Commissioners Murphy, Palestin & Macduff

Page 2

RE: QUENTIN & JEANNE FIORE

White, 11 A.D. 2d 854, appeal denied 11 A.D. 2d 964, aff'd. 9 N.Y. 2d 995.

I am in accord with the opinion of the hearing officer and approve of the proposed determination. Will you kindly review the file and advise whether you approve of the proposed determination.

The file is hereto attached. Kindly return the same after disposition.

/s/

F. KELLIHER

Assistant Director

SS/kk

Encls.

February 15, 1965

(Determination signed by all three commissioners; returned to Mr. Best as of 3/1/65.)