

## BUREAU OF LAW

## MEMORANDUM

*Unincorporated Business Tax Determinations A-2*  
*Roman, Isabella B.*

TO: Commissioners Murphy, Palestin & Macduff  
FROM: Solomon Sies, Hearing Officer  
SUBJECT: ISABELLA B. ROMANS

1957 Assessment No. B-782675  
1959 Assessment No. AB-006230  
1960 Assessment No. AB-006231

## Article 16-A

A hearing with reference to the above matter was held before me at 80 Centre Street, New York, N.Y. on October 15, 1964. The appearances and the evidence produced were as shown in the stenographic minutes and exhibits submitted herewith.

The issues involved herein are: (1) whether the taxpayer filed a timely application for revision or refund with respect to the assessment for the year 1957; and (2) whether the activities of the taxpayer during the years 1959 and 1960 as a bacteriological chemist rendering services as an independent contractor for Lily Tulip Cup Corporation constituted the practice of a recognized profession so as to exempt the income derived therefrom from the imposition of unincorporated business tax in accordance with Section 386, Article 16-A of the Tax Law.

The taxpayer, Isabella B. Romans, received a Bachelor of Arts Degree from Baylor University in Texas. She took post-graduate work at Columbia University in the fields of chemistry and bacteriology. She received patents for the prevention and removal of slime formations, disinfecting systems for swimming pools, which is a chemical process of applying chlorine and ammonia to foot baths and making it effective throughout the swimming pool system. She filed a patent for "Methods of Applying Oligodynamic Silver and Articles Produced Thereby", which was a method of treating things with silver to make them anti-bacterial, which is also a chemical process. The taxpayer contributed articles dealing with silver compounds to a book entitled "Antiseptics, Disinfectants, Fungicides and Sterilization" edited by Dr. George F. Reddish.

During the years in issue the taxpayer rendered services solely for Lily Tulip Cup Corporation in connection with their products performing chemical and bacterial tests and research in connection with the products of the aforementioned corporation using one of her patented processes. This is a complicated application and requires a special knowledge of both chemistry and bacteriology to produce an effective product that would be accepted by the Department of Agriculture and approved for safety by the Food and Drug Administration. Although the taxpayer used her patented process in connection with the services performed, independent research was necessary, otherwise the principal

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could have requested the taxpayer to issue a license for the use of her patent process. However, much more was required. The taxpayer was required to test the products of the Lily Tulip Cup Corporation in order to give them anti-bacterial activity and to conduct experiments in a laboratory operated by her.

Although the assessment for the year 1957 (Assessment No. B-782675) was made on May 19, 1960, the taxpayer did not file a timely application for revision or refund with respect thereto until May 4, 1962, more than the prescribed one year time limit required by Section 374 of the Tax Law. I am, therefore, of the opinion that the application for revision or refund for the year 1957 should be denied as untimely and that the assessment for said year should be sustained.

The Supreme Court of the United States in U. S. v. Laws, 163 U.S. 258, 16 S. Ct. 998, 41 L.Ed. 151, determined that the employment of a chemist in Germany by the operator of a sugar plantation in Louisiana did not violate the contract labor statutes of the United States for the reason that a chemist was a professional man, the opinion stating (163 U.S., at page 266, 16 S.Ct. at page 1001, 41 L.Ed. 151):

"Formerly theology, law, and medicine were specifically known as 'the professions'; but, as the applications of science and learning are extended to other departments of affairs, other vocations also received the name. The word implies professional attainments in special knowledge, as distinguished from mere skill,--a practical dealing with affairs, as distinguished from its pursuit for its own purposes. There are professors of chemistry in all the chief colleges of the country. It is a science, the knowledge of which is to be acquired only after patient study and application. The chemist who places his knowledge acquired from a study of the science to the use of others, as he may be employed by them and as a vocation for the purpose of his own maintenance, must certainly be regarded as one engaged in the practice of a profession which is generally recognized in this country."

The Commission in the hearing determination in the Matter of Manache (3/7/61) held that a chemist operating an analytical laboratory is not subject to unincorporated business tax although no license is required.

I am of the opinion that the activities of the taxpayer for the years 1959 and 1960 as a bacteriological chemist performing chemical and bacteriological research constituted the practice of a

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recognized profession in accordance with Section 386, Article 16-A of the Tax Law. The assessments for the years 1959 and 1960 (Assessment Nos. AB-006230 and AB-006231) should, therefore, be cancelled.

For the reasons stated above, I recommend that the determination of the Tax Commission in this matter be substantially in the form submitted herewith.

/s/ SOLOMON SIES  
Hearing Officer

/s/

MARTIN SCHAPIRO

Approved

/s/

E. H. BEST

Approved

SS/kk  
Encls.

FEB 8 1965

STATE OF NEW YORK

STATE TAX COMMISSION

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IN THE MATTER OF THE APPLICATIONS

OF

ISABELLA B. ROMANS

FOR REVISION OR REFUND OF UNINCORPORATED  
BUSINESS TAXES UNDER ARTICLE 16-A OF THE  
TAX LAW FOR THE YEARS 1957, 1959 & 1960.  
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Isabella B. Romans, the taxpayer herein, having filed applications for revision or refund of unincorporated business taxes under Article 16-A of the Tax law for the years 1957, 1959 and 1960 and a hearing having been held in connection therewith at the office of the State Tax Commission, 80 Centre Street, New York City, N.Y. on the 15th day of October, 1964 before Solomon Sles, Hearing Officer of the Department of Taxation and Finance, at which hearing the taxpayer appeared personally and testified and the matter having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That during the calendar years 1957, 1959 and 1960 the taxpayer rendered services as a bacteriological chemist solely to Lily Tulip Cup Corporation of New York City as an independent contractor and not as an employee; that in connection with said activities the taxpayer maintained an office or laboratory under the name of Chloramine Company at 54 West 16th Street, New York City, N.Y.; that in connection with the aforementioned services the taxpayer was required to perform bacterial and chemical tests and research in connection with the various products of the Lily Tulip Cup Corporation such as coating material in order to give containers and cups anti-bacterial activity; that the services rendered by the taxpayer requires a

complicated application and a special knowledge of both chemistry and bacteriology to produce an effective product that would be accepted by the United States Department of Agriculture and approved for safety by the Food and Drug Administration.

(2) That capital was not a material factor in the production of the income from the activities referred to in Finding No. (1) herein; that more than 80% of the gross income from said activities was derived from personal services rendered by the taxpayer.

(3) That the taxpayer, Isabella B. Hansen, received a Bachelor of Arts Degree from Baylor University in Texas; that she took post-graduate work at Columbia University in the fields of chemistry and bacteriology; that she was elected a fellow of the American Institute of Chemists; that she received patents for the prevention and removal of slime formations, disinfecting systems for swimming pools, which is a chemical process of applying chlorine and ammonia to foot baths and having it effective throughout the swimming pool system; that she filed a patent for Methods of Applying Oligodynamic Silver and Articles Produced Thereby, which was a method of treating things with silver to make them anti-bacterial; that it is also a chemical process; that the taxpayer contributed articles dealing with silver compounds to a book entitled "Antiseptics, Disinfectants, Fungicides and Sterilization" edited by Dr. George F. Reddish.

(4) That although the assessment for the year 1957 was made on May 19, 1960, the taxpayer did not file an application for revision or refund with respect to said assessment until May 4, 1962.

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

**DETERMINES:**

(A) That the taxpayer's application for revision or refund with respect to the assessment (Assessment No. 1-782675)

for the year 1957 was not timely filed within one year from the date of the making of said assessment as required by Section 374 of the Tax Law; that, accordingly, the taxpayer's application for revision or refund with respect to said assessment (Assessment No. E-782675) be and the same is hereby denied.

(B) That the activities of the taxpayer, Isabella E. Romans, as a bacteriological chemist during the years 1959 and 1960 constituted the practice of an exempt profession within the meaning of Section 386 of the Tax Law.

(C) That the additional unincorporated business tax assessments under Article 16-A of the Tax Law for the years 1959 and 1960 (Assessment Nos. AB-006210 and AB-006211, respectively) were not due and not lawfully demanded and that the aforementioned assessments are hereby cancelled in full,

AND IT IS SO ORDERED.

DATED: Albany, New York on the 26th day of August, 1965.

**STATE TAX COMMISSION**

/s/

JOSEPH H. MURPHY  
**President**

Commissioner

/s/

JAMES R. MACDUFF  
**Commissioner**