

STATE OF NEW YORK
STATE TAX COMMISSION

*Unincorp. Bus. Tax,
Determinations A-Z
Rosenblatt & Arluck
(Franklin) (Irving)*

IN THE MATTER OF THE APPLICATIONS

OF

FRANKLIN D. ROSENBLATT &
IRVING ARLUCK, individually
and as co-partners d/b/a the
firm name and style of:

ROSENBLATT & ARLUCK

FOR REVISION OR REFUND OF UNINCORPORATED
BUSINESS TAXES UNDER ARTICLE 16-A OF THE
TAX LAW FOR THE YEARS 1954, 1955 AND 1956.

*See also
Unincorp. Bus. Tax
Determinations A-Z
Shapiro, Meyer
(9/10/65 - 10/18/65)*

The taxpayer, Franklin D. Rosenblatt, having filed applications for revision or refund of unincorporated business taxes under Article 16-A of the Tax Law for the years 1954, 1955 and 1956 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 23rd day of October, 1963, before Solomon Sles, Hearing Officer of the Department of Taxation and Finance, at which hearing the taxpayers appeared personally and were represented by Edwin S. Lipson, Esq., 1301 Broadway, New York, N.Y. 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 1954, 1955 and 1956 without computing unincorporated business taxes or paying the same and setting forth in such returns that the partnership was engaged in structural engineering and that the same was an exempt profession; that assessments were issued on November 13, 1957 (Assessment Nos. N-35574 and N-35575 for the years 1954 and 1955, respectively) and also on January 7, 1960 (Assessment No. AD-716987 for the year 1956) assessing unincorporated business taxes on the ground that the 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, Franklin D. Rosenblatt, was a graduate of Polytechnic Institute having received a degree of Bachelor of Civil Engineering; that the taxpayer, Irving Arush, did not receive any baccalaureate degree, but had taken specialized courses at Pratt Institute which are usually credited toward a degree in engineering; that the taxpayer, Franklin D. Rosenblatt, has been continually engaged in structural steel detailing since 1934; that the taxpayer, Irving Arush, has been continually engaged in the field of structural steel detailing since 1945; that neither taxpayers were 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, 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 50% of the gross income of the respective taxpayers is derived from personal services actually rendered or supervised by the individuals and capital is not an income-producing factor.

(5) Section 2202 (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

ORDERED:

(6) That during the years 1974, 1975 and 1976 the taxpayers' activities which consisted of structural steel detailing, more fully described in Finding No. (3) above, although consisting of a skill requiring a knowledge of engineering principles, did not constitute the practice of engineering or any other profession except that the imposition of unincorporated business taxes in accordance with Section 306 of the Tax Law; that the taxpayers' activities during the years 1974, 1975 and 1976 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 18-A of the Tax Law.

(7) That the unlicensed activities performed by the taxpayer to the extent that the same consist 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 136 of the Tax Law.

(C) That, accordingly, the assessments for the years 1974, 1955 and 1976 (Assessment Nos. B-355344 and B-355345 and AB-716987) 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

COMPTROLLER

/s/

IRA J. PALESTIN

COMPTROLLER

/s/

JAMES R. MACDUFF

COMPTROLLER