

BUREAU OF LAW

MEMORANDUM

Unincorp. Bus. Tax Determinations A-2
Shapiro, Jack

TO: Commissioners Murphy, Palestin and Macduff

FROM: Solomon Sies, Hearing Officer

SUBJECT: Jack Shapiro, application for revision or refund of an assessment of personal income and unincorporated business taxes for the years 1954 and 1955

A hearing with reference to the above matter was held before me at 80 Centre Street, New York, N. Y., on October 21, 1963. The appearances and the evidence produced were as shown in the stenographic minutes and exhibits submitted herewith.

There are two issues involved herein: (1) whether the taxpayer is exempt from the imposition of unincorporated business tax on the ground that he is engaged in a recognized profession in accordance with section 386 of the Tax Law; and (2) whether the disallowance in the sum of \$2,625 claimed as a bad debt for the year 1955 was proper.

During the years 1954 and 1955, the taxpayer maintained an office in the City of New York and contends that he was engaged in business as a consulting engineer mainly in the field of electronics for various firms on a fee or per diem basis. In the course of his work the taxpayer attended conferences, did research and submitted reports in connection therewith. A great deal of this work involved projects for the military services pertaining to radar and communications, some of which were classified.

Although the taxpayer attended the College of the City of New York, majoring in electrical engineering and took courses at other colleges in the fields of science, patent law and computers and studied with various engineering groups, he does not hold a degree in electrical engineering or any other degree, nor is he licensed as a professional engineer in accordance with the New York State Education Law in the State of New York.

The taxpayer contends that he is a consulting engineer in the field of electronics; that his activities consist of the private practice of engineering in this field and that no license is required for such work since it does not involve the safety of the public; that his activities constitute the practice of a recognized profession exempt from unincorporated business tax.

I am of the opinion that if it be deemed that the taxpayer was engaged in the practice of electrical engineering which is

one of the fields of engineering covered by the examination for the license of professional engineer granted by the Education Department of the State of New York, he is required to be licensed as a professional engineer. Since the taxpayer did not have such license and did not have a degree in electrical engineering, his activities during the years in question must be considered as that of an electronics technician which is not a recognized profession within the intent and meaning of section 386 of the Tax Law so to exempt the income received by him in connection therewith from the imposition of unincorporated business taxes in accordance with Article 16-A of the Tax Law.

With respect to the disallowance of the deduction claimed for bad debts in the sum of \$2,625, the Internal Revenue Service disallowed the same as a business loss but allowed it as capital loss in accordance with section 166 I.R.C. and permitted the taxpayer to deduct the same as a short-term capital loss under section 1211(b) I.R.C. with the right to carry said loss over a period of three years in accordance with section 1212 I.R.C. It appears that although these so-called "bad debts" did not arise out of the regular business of the taxpayer they dealt with loans which he had made. It is to be noted that these "bad debts" did not constitute "worthless securities" which would be treated as a capital loss, in computation of net capital gain. (Art. 487-e. I.T. Regs.)

I am, therefore, of the opinion that the deduction claimed by the taxpayer for bad debts in the sum of \$2,625 for the year 1955 should have been allowed in accordance with section 360(7) by the Tax Law and that portion of the assessment for the year 1955 insofar as it relates to normal tax in the sum of \$138.30 should 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

SS/kk/ca

/s/

M. SCHAPIRO

Approved

/s/

E. H. BEST

Approved

August 20, 1965

OF NEW YORK
STATE TAX COMMISSION

IN THE MATTER OF THE APPLICATIONS

OF

JACK SHAPIRO

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

New York State income tax returns under Article 16 of the Tax Law having been filed by the taxpayer herein for the calendar years 1954 and 1955; no unincorporated business tax returns having been filed for said years; notices of additional assessments for the years 1954 and 1955 (Assessment Nos. B-381980 and B-429250, respectively) having been made; timely applications for revision or refund with respect to the aforesaid assessments having been filed; said applications for revision or refund having been denied and timely demands for a hearing having been filed; a hearing having been held in connection therewith at the office of the State Tax Commission at 80 Centre Street, New York, New York on October 21, 1955, before Solomon Sies, hearing officer for the Department of Taxation and Finance, at which hearing the taxpayer appeared personally and testified and the record having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That the taxpayer on his personal income tax returns for 1954 and 1955 reported gross income in the sum of \$16,908.82 and \$23,427.93 and net income in the sum of \$7,124.79 and \$7,800.24 respectively from business.

(2) That during the years 1954 and 1955, the taxpayer maintained an office in the City of New York and contends that he was engaged in business as a consulting engineer mainly in the field of electronics for various firms on a fee or per diem basis; that in the course of his work, the taxpayer attended conferences, did research and submitted reports in connection therewith; that a great deal of this work involved projects for the military services pertaining to radar and communications, some of which were classified; that the taxpayer further contends that his activities constituted the practice of a profession so that his income was exempt from the unincorporated business tax.

(3) That although the taxpayer attended the College of the City of New York, majoring in electrical engineering and took courses at other colleges in the fields of science, patent law and computers and studied with various engineering groups, he does not hold a degree in electrical engineering or any other degree, nor is he licensed as a professional engineer in accordance with the New York State Education Law in the State of New York.

(4) That during the years in issue, the activities of the taxpayer did not constitute that of the practice of professional engineering; that the activities of the taxpayer constituted that of an electronics technician or consulting electronics technician; that the taxpayer could not be considered as engaged in the profession of engineering since he did not have a license to engage in such profession as indicated in Finding No. 2 above; that the taxpayer's net income during the years 1954 and 1955 were attributable to New York State sources.

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

DETERMINES:

(A) That the activities of the taxpayer constituted the carrying on of a business rather than the practice of a profession within the intent and meaning of Section 386 of the Tax Law; that his net income was therefore subject to unincorporated business income taxes in accordance with Article 18-A of the Tax Law.

(B) That the taxpayer on his return for the year 1955 properly deducted the sum of \$2,825.00 for bad debts and that the same should have been allowed as a proper deduction in accordance with Section 360(7) of the Tax Law; that the portion of the assessment for the year 1955 insofar as it relates to additional normal tax in the sum of \$138.38 be and the same is hereby cancelled.

(C) That, accordingly, the assessments, except as indicated in Paragraph B above, are correct; that same do not include any tax or other charge which could not have been lawfully demanded; and that the applications for revision or refund with respect to the said assessments, except as otherwise provided herein be and the same are hereby denied.

DATED: Albany, New York on the 26th day of August, 1955.

STATE TAX COMMISSION

/s/

JOSEPH H. MURPHY
President

Commissioner

/s/

JAMES R. MACDUFF
Commissioner