

## BUREAU OF LAW

## MEMORANDUM

*Unincorp. Bus. Tax Determinations A-Z*  
*Shapiro, Meyer*

TO: Commissioners Murphy, Palastin & Macduff  
 FROM: E. H. Best, Counsel  
 SUBJECT: MEYER SHAPIRO -- Article 16-A  
 1955 Assessment No. B-556214  
 1956 Assessment No. B-556215  
 1957 Assessment No. AB-004893

*x-ref* ROSENBLATT & ARLUCK -- Article 16-A  
 1954 Assessment No. B-355344  
 1955 Assessment No. B-355345  
 1956 Assessment No. B-716987

*x-ref* CHESTER & LEVINE -- Article 16-A  
 1956 Assessment No. B-742103  
 1957 Assessment No. B-742104

## FORMAL HEARINGS

Separate formal hearings were held in the above matters (by Mr. Sies in the first two matters and Mr. Schapirc in the last matter). Mr. Lipson of the firm of Godwin & Lipson, Esqs. represented each of the taxpayers at each of the formal hearings held. In view of the fact that similar questions of fact and law are involved in each of the hearings and the attorney for the taxpayers has conceded that the law applicable in the case of one taxpayer should be applied to the others, this memorandum is being submitted to cover all three hearings.

The common question involved herein is whether the activities of the taxpayers engaged in structural steel detailing constitutes the practice of a recognized profession in accordance with Sect on 386 of the Tax Law.

None of the taxpayers are licensed to practice professional engineering in this State in accordance with Article 145, Sections 7201 through 7204 of the Education Law, covering the licensing of engineers and surveyors nor are they licensed to practice professional engineering in any other state.

The activities of the taxpayers with regard to their structural steel detailing, which they claim is a phase of structural engineering, consisted of receiving a line diagram from their clients who were steel fabricators prepared by a professional engineer or

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architect. These line diagrams specify the steel members required in a particular building or structure. The taxpayers are 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. 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. They are technical vehicles of instructions and usually include bills of materials, indices, detail sheets and erection plans.

In the three cases herein more than 80% of the gross income of the respective taxpayers was derived from or attributable to personal services actually rendered by the individuals or members of the partnerships and capital is not an income producing factor.

**MEYER SHAPIRO**

The 1957 assessment (Assessment No. AB-004893) was issued on March 29, 1962. The taxpayer wrote the Income Tax Bureau on April 3, 1962 protesting said assessment and requested that the aforementioned assessment be included and considered in the formal hearing for the years 1955 and 1956 for which a demand for a formal hearing had been previously filed by him. On April 24, 1962 Mr. Jacob Bodian wrote the taxpayer advising him that the 1957 assessment would be included in the formal hearing to be held for the years 1955 and 1956. At the formal hearing it was stipulated that the 1957 assessment be included and considered together with the assessments for the years 1955 and 1956. Meyer Shapiro does not have a degree in engineering. As a matter of fact, he does not have any college degree, although he pursued courses in physics, mechanical drawing, drafting, mathematics, and some courses usually credited toward a degree in engineering. Meyer Shapiro has been actively engaged in structural steel detailing for a period of over thirty-four (34) years. Mr. Shapiro submitted at the hearing statements from certain professional engineers and architects indicating that the work performed by him includes the designing of connections and the details of built-up members; that he is familiar with welding, riveting and the method of fabrication and erection; that his work involves calculation of stresses and deflections in accordance with applicable codes, as well as "Standard Practice of Steel Construction" of the American Institute of Steel Construction, the New York City Building Code, and the Building Codes of other Municipals and State jurisdictions. In 1954, Mr. Shapiro went into business for himself maintaining an

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office where he employs a number of draftsmen in connection with his structural steel detailing business.

ROSENBLATT & ARLUCK

In the case of the co-partnership of Rosenblatt & Arluck, one of the co-partners, Mr. Rosenblatt, obtained a Bachelor's Degree in Civil Engineering from Polytechnic Institute in 1944. Mr. Arluck does not have a degree in engineering nor any other college degree, although he took some courses at Pratt Institute which are usually credited toward a degree in engineering. Mr. Rosenblatt has been continually engaged in structural steel detailing since 1944. His co-partner, Mr. Arluck, has worked in the field of structural steel detailing continually since 1945. This co-partnership was in existence during the years 1944, 1955 and 1956 and employed draftsmen and engineers in connection with the work of structural steel detailing. Mr. Rosenblatt testified (Page 9, Minutes of Hearing) that the detailer is responsible for the strength of the members; that it was "our job to design and adequately reinforce the connection so that it would be structurally sound" (Minutes of Hearing, Rosenblatt & Arluck, Page 11).

CHESTER & LEVINE

In the case of Chester & Levine only one of the co-partners, Mr. Levine, obtained a Bachelor's Degree in Civil Engineering from New York University in 1958. His co-partner, Mr. Chester, has no degree in engineering nor any other college degree, but has pursued some courses of study which are usually credited toward a degree in engineering. Mr. Levine has had about twenty (20) years of experience in structural steel detailing and his partner, Mr. Chester, has worked in structural steel detailing since 1946. Both individuals belong to an association known as the Institute of Steel Detailers. 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 engaged in such activity. Testimony in that hearing disclosed that the taxpayers had no authority to change or modify any plans submitted by the engineers but that same required the engineer's final approval.

The attorney for the taxpayer in his brief has indicated that contract forms of certain departments of construction, including that of the State of New York, require that structural steel detailing be prepared by professional engineers; that other authorities make no such requirements. The attorney for the taxpayers has also stressed the fact that the work of the taxpayers in preparing a drawing

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for structural steel detailing is to be distinguished from that of a structural bar detailer; that the structural bar detailer receives specified details from the engineer's plans as to the type of reinforcing bar details which are required for a specific job; that all that the bar detailer is required to do is to go through these plans and make a list of the various different types required and the number thereof; that this job is a clerical one since it does not require any knowledge of engineering principles or practice.

The attorney for the taxpayers has conceded in his brief that structural steel detailing, per se, is not a profession. However, he contends that structural steel detailing is a phase of engineering and that, therefore, the taxpayers should be included in the exemption extended to professional engineers. However, his position is that a license is not required for this type of work.

If the work that the taxpayers are engaged in doing requires the application of engineering principles and data and involves designing, evaluating or planning of construction or operation, in connection with any public or private utilities, structures, buildings, machines, equipment, processes, works or projects which involve the safeguarding of life, health, or property, (and the erection of a building or structure of necessity requires the safeguarding of life, health & property) then it would appear that the taxpayers are engaged in activities which conform to the definition of engineering as set forth in Section 7201 (4) of the Education Law.

It is to be noted that the taxpayers testified to the effect that professional engineers engage in the activities in which the taxpayers are engaged, that is, structural steel detailing. It would appear, therefore, if we accept the fact that the taxpayers are engaged in a phase of engineering, that they are practicing professional engineering without being licensed therefor as required by Section 7202 (1) of the Education Law.

I am in agreement with the hearing officers in their opinion that, although the activities of structural steel detailing requires a knowledge of engineering and skill, such activities do not constitute a profession in accordance with the intent and meaning of Section 386 of the Tax Law. Moreover if such activities constitute a phase of professional engineering for which a license is required by the Education Law, the taxpayers having not been licensed cannot be deemed professional within the intent and meaning of Section 386 of the Tax Law.

MEYER SHAPIRO  
ROSENBLATT & BRUCK  
CHESTER & LEVINE

I am, therefore, approving the proposed determinations of the hearing officers affirming the assessments and denying the applications for revision or refund. If you agree with such determinations, kindly sign the same and return with the attached files to the Law Bureau for further processing.

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Counsel

CS/kk  
Encls.

September 10, 1965

STATE OF NEW YORK

STATE TAX COMMISSION

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IN THE MATTER OF THE APPLICATIONS

OF

MEYER SHAPIRO

FOR REVISION OR REFUND OF UNINCORPORATED  
BUSINESS TAXES UNDER ARTICLE 16-A OF THE  
TAX LAW FOR THE YEARS 1955, 1956 AND 1957.  
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The taxpayer, Meyer Shapiro, having filed applications for revision or refund of unincorporated business taxes under Article 16-A of the Tax Law for the years 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 11th day of September, 1961 before Solomon Sloss, Hearing Officer of the Department of Taxation and Finance, at which hearing the taxpayer appeared personally and was represented by Calvin A. Lipson, Esq., 1501 Broadway, New York, N.Y. by Paul S. Lipson, Esq., Of Counsel; it having been stipulated that the 1957 assessment of additional unincorporated business taxes also be considered herein and the matter having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That the taxpayer filed personal income tax returns for the years 1955, 1956 and 1957 wherein he set forth in Schedule A thereof that he was engaged in business as an engineer but did not file any unincorporated business tax returns for the aforementioned years; that assessments were issued on February 26, 1959 (Assessment Nos. S-556074 and S-556015 for the years 1955 and 1956, respectively) and an assessment was also issued on March 29, 1962 (Assessment No.

As-004673 for the year 1937) assessing unincorporated business taxes on the ground that the activities of the taxpayer constituted the carrying on of an unincorporated business subject to tax;

(2) That during the years involved herein the taxpayer was engaged in the activity of structural steel detailing work; that he maintained an office in the City of New York where he employed a number of draftsmen in connection with such work; that the taxpayer did not receive any baccalaureate degree but had taken some college courses usually credited towards a degree in engineering; that the taxpayer was not and is not licensed to practice professional engineering in this State or any other State;

(3) That the activities of the taxpayer during the years in question involving structural steel detailing on behalf of steel fabricators consisted of the taxpayer 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 material, indices, detail sheets and erection plans; that the taxpayer is familiar with welding, riveting and the method of fabrication and erection; that his work involves calculation of stresses and deflections in accordance with various building codes, as well as "Standard Practice of Steel Construction" of the American Institute of Steel Construction; that the taxpayer had no authority to change or modify any plans submitted by the engineer or architect but that some required the final approval of such engineer or architect.

(4) That more than 50 per cent of the gross income of the taxpayer is derived from or attributable to personal services actually

rendered by him 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 1955, 1956 and 1957, the taxpayer's 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 taxpayer's activities during the years 1955, 1956 and 1957 constituted the carrying on of an unincorporated business within the State of New York and that his 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 the taxpayer to the extent that the same constitutes work sometimes performed by licensed professional engineers is not 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 306 of the Tax Law.

(C) That, accordingly, the assessments for the years 1955, 1956 and 1957 (Assessment Nos. L-554214, L-554215 and L-554216, respectively) 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