

Unincorp. Bus. Tax
BUREAU OF LAW
MEMORANDUM

Determinations A-Z
Baker, Sam and
Ests

TO: Commissioners Murphy, Macduff and Conlon

FROM: Francis V. Ben, Hearing Officer

SUBJECT: SAM AND ESTA BAKER

Revision or Refund of Unincorporated Business Taxes Under Article 16-A of the Tax Law for the Year 1959

A hearing with reference to the above matter was held before me at 80 Centre Street, New York, New York on November 12, 1961. The appearances and the evidence produced were as shown in the stenographic minutes submitted herewith.

The issue involved in this matter is whether the income of the taxpayer from motion picture film booking commissions was income from the practice of a profession and not subject to the unincorporated business tax.

The taxpayer filed personal income and unincorporated business tax returns for the year 1959. In his unincorporated business tax return he reported a loss of \$9,143.38 in his business as a motion picture distributor. In his income tax return he reported income from booking commissions in the amount of \$19,681.81.

An assessment was issued on October 3, 1961 for the year 1959 (Assessment No. B 952032) assessing unincorporated business tax due in the amount of \$116.76 on the basis that the taxpayer's income from booking commissions constituted income subject to unincorporated business tax. The taxpayer contended that it was not business income but was earned from professional services rendered to clients on a fee basis, which services included advice and arrangements for booking films at various motion picture theatres.

The taxpayer's commission income was received as consultation fees, booking fees and management fees. The consultation services consisted of advising theatres of the type of pictures to be shown at theatres for a particular time of the year and the combination of such films to be shown. His booking fees were rental charges of films shown at theatres.

No license was required for the taxpayer to perform services connected with his consultations and bookings. The fees received by him for his services were in the nature of advising management as to its business affairs and were not exempt from the unincorporated business tax (*Reginald V. Reginald, 8 A 2d 803; Ross v. Reginald, 8 A 2d 807*).

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His management services consisted of signing checks, handling bank credit and similar duties for a corporation engaged in the motion picture theatre business of which he was an officer. He received \$250.00 for such services.

It is my opinion that the income designated management fees received by the taxpayer as an officer of a corporation is not subject to the unincorporated business tax in that such fees are for services ordinarily rendered to be rendered by an officer of a corporation as such officer.

For the reasons stated above, I recommend that the determination of the State Tax Commission in the above matter modifying the assessment by reducing it by the sum of \$2.75 and otherwise leaving it be substantially in the form specified herewith.

/s/

FRANCIS V. DOW

~~REVENUE COMMISSIONER~~

FVD:ms
Enc.

July 14, 1967

8-28-67

STATE OF NEW YORK

STATE TAX COMMISSION

IN THE MATTER OF THE APPLICATION

OF

EDM AND ESTA BAKER

**FOR REVISION OR REFUND OF UNINCORPORATED
BUSINESS TAXES UNDER ARTICLE 16-A OF THE
TAX LAW FOR THE YEAR 1959**

The taxpayer herein having filed an application for revision or refund of unincorporated business tax under Article 16-A of the Tax Law for the year 1959 and a hearing having been held in connection therewith at the office of the State Tax Commission, 80 Centre Street, New York, New York on November 13, 1966, at which hearing the taxpayer was represented, and the record having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That the taxpayer filed personal income tax and unincorporated business tax returns for the year 1959; that in his unincorporated business tax returns the taxpayer reported a loss of \$9,153.30 in his business as a motion picture distributor; that the taxpayer did not include in his unincorporated business tax return his income of \$19,621.21 which he reported in his personal income tax return as earned from booking commissions.

(2) That an assessment was issued for 1959 on October 3, 1961 in the amount of \$116.76 (Assessment No. B 932832) on the basis that the taxpayer's income from booking commissions constitutes business income subject to the unincorporated business tax.

(3) That the taxpayer was a motion picture distributor;

that the taxpayer also acted as a consultant and booking agent for various theatres from which he received the aforesaid \$19,621.21 which was reported by the taxpayer on his return as booking commissions; that included in such commissions were (a) consultation service fees, (b) booking fees, and (c) management fees amounting to \$200.00 which was received as an officer of a corporation.

(4) That the taxpayer's consultation services consisted of advising theatres of the type of picture best suited for a particular area to be shown for a particular time of year and the best combination of films to be shown at such theatres for which services he received fees; that from some of the theatres for which he rendered consultation services he also received booking fees which were rental charges on film shown at theatres; that the taxpayer's management duties consisted of signing checks, handling bank credit and similar duties for a corporation of which the taxpayer was an officer.

(5) That the taxpayer was not required to be licensed to perform any of his services which he claimed was the practice of a profession; that no formal education was required in order to be able to perform any of such services.

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

DETERMINES:

(A) That the monies designated management fees received by the taxpayer in the amount of \$200.00 were not subject to the unincorporated business tax since they were received as an officer of the corporation and did not constitute receipts of a business regularly carried on by him since such fees were for services ordinarily required to be rendered by an officer of a corporation as such officer.

(B) That the services performed by the taxpayer as a

consultant and booking agent dealt with the business aspects of the operation of motion picture theatres and the promotion of income rather than the application of a separately developed art or science and, accordingly, did not constitute the practice of a profession within the intent and meaning of section 386 of the Tax Law.

(C) That the taxpayer's unincorporated business tax is recomputed as follows:

Net income from booking commissions and consultation fees		\$19,421.21
Less net loss Motion Picture Distributions		<u>9,143.30</u>
Net business income		\$10,277.91
Less allowance for services	\$2,055.58	
Exemption	<u>5,000.00</u>	<u>\$ 7,055.58</u>
Balance subject to unincorporated business tax		\$ 3,222.33
Unincorporated business tax at 4%	\$ 128.89	
Less reduction	<u>17.89</u>	
Net unincorporated business tax due	\$ 111.00	

(D) That the additional tax assessed against the taxpayer for the year 1959 (Assessment No. B 932832) is hereby reduced from \$116.76 to \$111.00 and the balance of such assessment in the amount of \$5.76 is hereby cancelled; that to the extent that the assessment is correct and hereby affirmed and that the taxpayer's application for revision or refund with respect thereto as modified be and the same is hereby denied.

DATED: Albany, New York on this 22nd day of September , 1967.

STATE TAX COMMISSION

/s/

JOSEPH H. MURPHY
PRESIDENT

/s/

JAMES R. MACDUFF
COMMISSIONER

/s/

WALTER MACLYN CONLON
COMMISSIONER