

*Unincorp. Bus Tax
Determinations A-Z
Bang, Read R. & Shirley*

Commissioners Murphy, Macduff and Conlon

Solomon Sies, Hearing Officer

READ R. AND SHIRLEY BANG

**Petition for Redetermination of Deficiency
of Unincorporated Business Taxes for the
years 1961, 1962 and 1963 - Article 23**

A hearing in the above matter was held before me at the New York City office on December 13, 1965. The appearances and exhibits were as indicated in the stenographic transcript of the record.

The issue involved is whether the taxpayers, husband and wife, were co-partners carrying on an unincorporated business.

The taxpayers entered into an agreement with Field Enterprises Educational Corporation of Chicago, Illinois, whereby they were to act as co-managers of the branch office of the corporation on a commission basis for all sales of World Book Encyclopedia, Childcraft, the Cycle-Teacher, and the World Book Dictionary directly to homes, schools and librarians made in the territory assigned to them in the States of Rhode Island, New York, Connecticut and New Jersey. The corporation employs part time and full time sales personnel pursuant to written agreements, pays their commission directly, and deducts withholding and social security taxes on such commissions. The sales staff is trained and supervised by the taxpayers in accordance with instructions from the corporation. The activities of the taxpayers on behalf of the corporation were conducted from offices located at 11 West 42nd Street, N.Y.C. which were shared with a division manager. The lease of the premises is in the name of Mr. Bang and the division manager and the rent therefor is divided between them. The office is listed in the name of Field Enterprises Educational Corporation in the building lobby, entrance door and in the Manhattan telephone directory. The lease required the approval of the corporation. The latter, on its annual tax reports, indicated the aforementioned office as one of its offices located in the State of New York and would guarantee the payment of rent therefor, if requested to do so. The agreement provided that the taxpayer be paid weekly one dollar per set credit on net accepted orders against the cost of maintenance of the office. The clerical staff in the office was paid directly by the corporation.

and it withheld Federal and State income and social security taxes from such salaries. One half of the total commissions earned by the taxpayers was paid to each of them, separately, by the corporation who withheld Federal and State income taxes and social security from such commissions. Each of the taxpayers was a member of the company's Employee's Profit-Sharing Plan. All of the office furniture and equipment is owned by the corporation. Under the agreement, the corporation reserves the exclusive right to accept or reject any or all orders at prices and terms that may be specified by it from time to time. Each taxpayer must devote undivided time and attention to the selling of the corporation's products. The taxpayers are required to follow all instructions and directions of the corporation and are further required to furnish the home office with regular reports. The corporation, in its discretion, may change the territory assigned to the taxpayers. The City of New York in considering the taxpayers' liability for general business tax purposes determined that the taxpayers must-employees of the corporation and exempt from such tax. The representative for the taxpayers submitted a letter from the Internal Revenue Service to the effect that the latter considered the taxpayers "employees" for Federal Income Tax purposes.

Subdivision 1, Section 10 of the partnership law defines a "partnership" as an association of two or more persons to carry on as co-owners a business for profit.

I am of the opinion that a partnership did not exist between the taxpayers, Reed R. Bary and Shirley Bary, his wife, in connection with their activities on behalf of Field Enterprises Educational Corporation; that the corporation exercised sufficient supervision and control over the activities of the taxpayers so as to constitute an employer-employee relationship, rather than that of an independent contractor with respect to each of the taxpayers; that the office from which the taxpayers conducted their activities was considered to be the office of the corporation.

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

APR 18 1967 4-21-67

SOLOMON SIES
Hearing Officer

/s/ MARTIN SCHAPIRO
Approved

/s/ SAUL HECKELMAN
Approved

STATE OF NEW YORK

STATE TAX COMMISSION

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IN THE MATTER OF THE PETITION :

OF :

ROED R. AND SHIRLEY RANG :

FOR A REDETERMINATION OF A DEFICIENCY :
OR FOR REFUND OF UNINCORPORATED BUSINESS :
TAXES UNDER ARTICLE 23 OF THE TAX LAW :
FOR THE YEARS 1961, 1962 AND 1963. :

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Roed R. and Shirley Rang, having filed a petition for redetermination of a deficiency or for refund of unincorporated business taxes under Article 23 of the Tax Law for the years 1961, 1962 and 1963, and a hearing having been held in connection therewith at the office of the State Tax Commission at 80 Centre Street, New York, N. Y. on the 13th day of December, 1963, at which hearing the taxpayer Roed R. Rang appeared personally and was represented by Paul, Weiss, Rifkind, Wharton & Garrison, Esqs. by Alan H. Cohen, Esq., of Counsel, testimony having been taken and the matter having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That Roed R. and Shirley Rang, his wife, filed New York State combined income tax returns for the years 1961, 1962 and 1963 in which they reported salary income received from Field Enterprises Educational Corporation of Chicago, Illinois; that for the year 1961 Roed R. Rang, reported gross salary income in the sum of \$71,075.12 and Shirley Rang \$71,075.06; that they deducted expenses in connection with said income in the amount of \$72,919.47; that for 1962 Roed R. Rang reported gross salary income received in the amount of \$77,130.32 and Shirley Rang \$77,130.68; that they deducted expenses in connection with said income in the amount of \$65,143.32; that for the year

1963 Read R. Bang reported gross salary income in the amount of \$48,941.28 and Shirley Bang in the amount of \$48,941.33; that the aforesaid taxpayers reported expenses in connection with the aforesaid income for said year in the amount of \$60,705.07; that on February 8, 1965, the Department of Taxation and Finance issued a statement of audit changes against Read R. Bang and Shirley Bang for the years 1961, 1962 and 1963 holding that a partnership existed between them and that their activities constituted the carrying on of an unincorporated business, the income from which was subject to the unincorporated business tax, and accordingly issued a notice of deficiency therefor imposing unincorporated business taxes against them for the years in issue.

(2) That Read R. Bang and Shirley Bang entered into an agreement with Field Enterprises whereby they were granted the exclusive right to sell World Book Encyclopedia, Childcraft, Cycle-Teacher and World Book Dictionary; that such sales were made directly to homes, schools and libraries by part time and full time sales people pursuant to written agreements with the company who paid their commission and deducted Federal and State withholding taxes and paid social security on such commissions; that Read R. Bang and Shirley Bang trained and supervised such sales persons in accordance with instructions furnished them by Field Enterprises Educational Corporation; that with respect to the sale of Childcraft and World Book Encyclopedia, Read R. Bang and Shirley Bang entered a written agreement with the company whereby they were designated as branch office division co-managers and were to receive commissions on all accepted sales orders consummated in the territory assigned to them consisting of the States of New York, Rhode Island, Connecticut and New Jersey;

that they were paid an additional commission for each accepted parent or teacher order paid in full or through substantial down payment obtained personally by them.

(3) That the aforementioned activities of the taxpayers were conducted from an office located at 11 West 42 Street, New York City; that the salaries of the clerical staff in said office were paid directly by the corporation and it deducted Federal and State withholding and social security taxes from such salaries; that the agreement provided that Read R. Bang and Shirley Bang were to be paid weekly \$1 per set credit on the net accepted order to apply against the cost of the maintenance of the aforementioned office; that the agreement further provided that a supply account shall be established for the manager and charged with the cost of all supplies furnished as costs paid and as expenses paid by the company on behalf of the manager.

(4) That one-half of the total commissions earned by Read R. Bang and Shirley Bang were paid by the company separately to each of them; that they were each members of company's Employee's Profit-Sharing Plan; that the company withheld Federal and State income taxes and Social Security taxes from the commissions paid.

(5) That the office located at 11 West 42nd Street, New York City, was shared by the taxpayers and a division manager; that the office furniture and equipment was owned and remained the property of Field Enterprises Educational Corporation; that the lease on said premises was in the names of Read R. Bang and the division manager and the payment of the rent therefor was divided between them; that the aforementioned office was listed in the name of Field Enterprises in the building lobby and entrance door and in the telephone directory; that the lease of the office required the approval of Field Enterprises

Educational Corporation who would guarantee the payment of rent provided therefor, upon request; that the corporation on its annual tax reports indicated the aforementioned office as one of its offices located within the State of New York.

(6) That Field Enterprises Educational Corporation exercised sufficient supervision and control over the activities of the taxpayers so as to constitute an employer-employee relationship with respect to each of them.

Based upon the foregoing findings and all of the evidence presented herein,

The State Tax Commission hereby

DECIDES:

(A) That a partnership did not exist between the taxpayers, Read R. Bang and Shirley Bang, his wife, in connection with their activities on behalf of Field Enterprises; that the relationship of each of the taxpayers with their principal was that of employee-employer exempt from the imposition of unincorporated business tax in accordance with the provisions of Section 703, Article 23 of the Tax Law.

(B) That, accordingly, the statement of audit changes and notice of deficiency imposing unincorporated business taxes against the taxpayers for the years 1961, 1962 and 1963 are incorrect; that the petition for redetermination is granted and the notice of deficiency for such years is hereby cancelled and revoked.

Dated: Albany, New York this 25th day of May 1967.

STATE TAX COMMISSION

/s/

JOSEPH H. MURPHY

PRESIDENT

/s/

JAMES R. MACDUFF

COMMISSIONER

/s/

WALTER MACLYN CONLON