

STATE OF NEW YORK
STATE TAX COMMISSION

See also
Unincorp. Bus. Tax
Determinations A-2

IN THE MATTER OF THE APPLICATIONS
OF

Singer, Stern &
Carlberg
(memo of 2/16/67)

CASIR CASABERO and ALAN O.
POLINSON, as executors of the
ESTATE OF OSCAR CARLBERG

FOR REVISION OR REFUND OF UNINCORPORATED
BUSINESS TAXES UNDER ARTICLE 16-A OF THE
TAX LAW FOR THE YEARS 1953, 1954 AND 1955.

The taxpayer, Oscar Carlberg, having filed applications for revision or refund of unincorporated business taxes under Article 16-A of the Tax Law for the years 1953, 1954, and 1955 and a hearing having been held in connection therewith at the office of the State Tax Commission at 80 Centre Centre Street, New York City, N. Y. on the 15th day of February, 1956 before Solomon Sles, Hearing Officer of the Department of Taxation and Finance, at which hearing the taxpayer was represented by the firm of Tischler & Tischler, Esqs., 205 Madison Avenue, New York City, N. Y. by Mortimer E. Tischler, Esq., Of Counsel, and the matter having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That during the years 1953, 1954 and 1955, the taxpayer, Oscar Carlberg, conducted business using the name of Singer, Stern & Carlberg by agreement and permission of the other partners (now deceased) at 405 Lexington Avenue, City and State of New York; that the decedent taxpayer, Oscar Carlberg, filed New York State Personal Income Tax Returns

for the years 1953, 1954 and 1955 but did not file or pay unincorporated business taxes during the aforementioned years; that on February 6, 1958 the Department of Taxation and Finance made assessments against the taxpayer (Assessment Nos. 71-73556, 71-73557 and 71-73558 for the years 1953, 1954 and 1955, respectively) holding that the activities of the taxpayer during the years in question constituted the carrying on of an unincorporated business subject to unincorporated business tax.

(2) That the taxpayer, Oscar Carlberg, was duly admitted and registered as a patent attorney before the United States Patent Office on June 2, 1917 and was continually registered with the United States Patent Office as a patent attorney for the period from 1917 through and including December 31, 1955; that the taxpayer was never admitted as an attorney to practice law before the United States Courts or the highest courts of any State or Territory of the United States.

(3) That the taxpayer, Oscar Carlberg, doing business as Singer, Stern & Carlberg during the years 1953, 1954 and 1955 was exclusively engaged in foreign patent and trademark work and that his income during the aforesaid period was derived solely from such work; that the activities of the taxpayer in foreign patent and foreign trademark work during the years in issue do not fall within the jurisdiction of the United States Patent Office.

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

(A) That the activities of the taxpayer during the years 1953, 1954 and 1955 do not constitute the practice of a recognized profession so as to exclude the income derived therefrom from the imposition of unincorporated business taxes; that the activities of the taxpayer as set forth in

Finding (3) above, during the aforementioned years constituted the carrying on of an unincorporated business within the intent and meaning of Section 386, Article 16-A of the Tax Law.

(B) That, accordingly, the assessments (Assessment Nos. FA-73596, FA-73597 and FA-73598 for the years 1953, 1954 and 1955, respectively) are correct; that said assessments do not include any tax or other charge which could not have been lawfully demanded and that the taxpayer's applications for revision or refund with respect to said assessments be and the same are hereby denied.

DATED: Albany, New York on the 3rd day of March , 1957 .

STATE TAX COMMISSION

/s/

JOSEPH H. MURPHY

Commissioner

/s/

JAMES R. MACDUFF

Commissioner

/s/

WALTER MACLYN CONLON

Commissioner