

Unincorp. Bus. Tax 1967
BUREAU OF LAW
MEMORANDUM

Determinations A-2
Clark, Frank J.
and J.
James P.

TO: Commissioners Murphy, MacDuff and Conlon

FROM: Alfred Rubinstein, Hearing Officer

SUBJECT: Applications of James P. and Frank J. Clark for Revision or Refund of Unincorporated Business Taxes Under Article 16-A of the Tax Law for the Years 1955 and 1956.

Petition of James P. and Frank J. Clark for Redetermination of a Deficiency or for Refund of Unincorporated Business Taxes Under Article 23 of the Tax Law for the Years 1960 and 1961.

A hearing on the above entitled matters was held before me on March 16, 1967 at 80 Centre Street, New York, New York. Appearances were as noted on the transcript.

Taxpayers filed partnership returns for the years involved, reporting no unincorporated business taxes. The Internal Revenue Bureau assessed \$1,079.94 for 1955 (No. B-439621) and \$694.07 for 1956 (No. B-770236), and computed a deficiency of \$1,079.94 for 1960 and 1961 (File No. P-621), on findings that the entire net income of the partnership in each year resulted from the conduct of business.

The issue was whether the purchase, sale, holding and management of real property, real estate brokerage, building construction, insurance brokerage and related activities of the taxpayers constituted carrying on of a business. At the hearing the taxpayers contended that, except for the income derived from the holdings of real property, their activities were subject to the tax, leaving a narrower issue of whether their real estate activities, aside from brokerage, constituted related, connected and incidental business activities.

Despite the fact that the taxpayers' testimony was to a great extent the result of leading questions posed by the taxpayers' representative, the facts presented are sufficiently clear in showing that the real estate activities were business activities for the reasons set forth below.

In 1947 the taxpayers formed a partnership, by oral agreement, each contributing an equal amount of capital. The witness was uncertain as to the amounts contributed, stating, "He put in a couple of thousand dollars apiece, twenty-five hundred or five thousand

BUREAU OF LAW
MEMORANDUM

1-2 (2-67)

TO: [illegible]
FROM: [illegible]
SUBJECT: [illegible]

[The body of the memorandum contains several paragraphs of text that are extremely faint and illegible due to the quality of the scan. The text appears to be a formal report or memorandum.]

apiece." The terms of the agreement, as was practically all of the direct testimony, was given by the representative who evaded positive or negative or similarly abbreviated responses from the witness.

The partners had previously been individually engaged in the real estate and insurance brokerage businesses, and the partnership activities consisted of purchases and sales of vacant land and buildings, erecting buildings, management of properties for others and themselves, and real estate and insurance brokerage. The real property, held jointly in the names of James P. and Frank J. Clark, was treated as partnership property. Although it was stated that all rents were deposited in a separate bank account, such receipts were recorded in a common cash book together with all other partnership receipts, and withdrawals were made from such account for general partnership expenses. All receipts, disbursements, income and expenses relating to the properties were reported on the partnership returns, together with other similar partnership items, and the partners' shares from these activities were reported by them on their individual returns as income and gain from the partnership. No books or records were produced to show any separation or records with regard to the claim that the real property activities of the partners were unconnected with their other business activities, and it was conceded that no allocation or apportionment was ever made with respect to any expenses or disbursements.

The witness testified that properties were purchased and sold in the course of the partnership real estate brokerage business; that the partnership listed for sale as broker, its own properties, and purchased for its own account properties listed for sale by owners (Transcript pages 51 and 52).

Section 306 of Article 16-A and Section 703 of Article 23 of the Tax Law both provide that holding, leasing or managing of real property shall not be deemed conducting a business "solely by reason of" such activities. The provision was originally enacted as an amendment to Section 306 by L. 1938, C. 411, for the purpose as stated in the Departmental memorandum, to relieve real property of the additional burden of the tax, during the depression years, when so many properties were being held by trustees for the benefit of mortgagees. The relief to be accorded was intended to accrue to the benefit of owners, lessees or fiduciaries whose only activities consisted of holding, leasing or managing real property (see letter of Commissioner Graves to Governor Lehman, dated March 22, 1938, annexed). Where a taxpayer is not "solely" engaged in the holding, leasing or management of real property, and is otherwise engaged in a business of broader aspect, he will be deemed to be conducting an unincorporated business. Sidney v. Shuman, 273 App. Div. 306;

Q. Now, did you see any other people in the room at that time?
A. No, I didn't see any other people in the room at that time.

Q. Did you see any other people in the room at that time?
A. No, I didn't see any other people in the room at that time.

Q. Did you see any other people in the room at that time?
A. No, I didn't see any other people in the room at that time.

Q. Did you see any other people in the room at that time?
A. No, I didn't see any other people in the room at that time.

Q. Did you see any other people in the room at that time?
A. No, I didn't see any other people in the room at that time.

Letter of Schirmer's Estate, 8 App. Div. 2d 180. Moreover, under the same sections of the Tax Law, dealers in property are not granted the exemption accorded others who purchase and sell property for their own accounts, solely as investors.

Accordingly, I am of the opinion that the taxpayers' activities in buying, selling, holding, leasing and management of real property were related and incidental to, connected with and an integral part of their building construction and real estate and insurance brokerage activities; that the taxpayers were dealers in real property, and that all of their activities constituted the conduct of an unincorporated business within the meaning of Section 305 and Section 703 of the Tax Law. The assessments and audit charges should be sustained.

The decision and determination of the Tax Commission should be in the forms submitted herewith.

/s/

ALFRED RUBINSTEIN

ALFRED RUBINSTEIN

**AR:13
Enc.**

June 20, 1967

7-6-67

March 22, 1938

Hon. Herbert H. Lehman
Governor of New York
Executive Chamber
Albany, N. Y.

In re: Senate bill, Intro. No. 736, Pr. No. 1933

My dear Governor:-

The above bill is in your hands for action. It amends section 536 of the Tax Law, in relation to the definition of unincorporated business for purposes of the tax on net incomes of unincorporated businesses imposed by Article 16-A of the Tax Law.

Real estate has long been the cause of anxiety or solicitude on the part of the State, because of the belief that it was already bearing more than its just proportion of the tax burden. In 1935, at the time of the enactment of the tax on net incomes of unincorporated businesses, it was not realized that such tax would be applicable to the holding, leasing or managing of real property. It has, however, been found in the administration of the tax that, because of the definition of unincorporated business, the holding or leasing of real property was engaging in an unincorporated business so as to be subject to tax. The imposition of a further tax of four per cent on net incomes upon a group of taxpayers already overburdened is inequitable. For example, it has been found that an individual owning a number of two family houses, who devotes his time and energy to their upkeep and management, is engaged in an unincorporated business, and subject to tax. It has also been found that trustees operating real property for the benefit of mortgagees are subject to tax, although in all probability the mortgagees will never recover the amount of the mortgage obligation. The amendment

Hon. Herbert H. Lehman

-2-

3/12/38

is designed to relieve an owner, lessee or fiduciary, whose only activity is the holding, leasing or managing of real property, from the burden of tax.

This bill was introduced at the request of the Department of Taxation and Finance. In my opinion, it should receive executive approval.

Very truly yours,

MARK GRAVES
Commissioner of
Taxation and Finance

**STATE OF NEW YORK
STATE TAX COMMISSION**

**IN THE MATTER OF THE ESTATE OF
OF
JAMES P. CLARK AND FRANK J. CLARK
FOR REDETERMINATION OF A DEFICIENCY OR
FOR REFUND OF UNINCORPORATED BUSINESS
TAXES UNDER ARTICLE 23 OF THE TAX LAW
FOR THE YEARS 1950 AND 1951**

James P. Clark and Frank J. Clark 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 1950 and 1951 (File No. T-525), and a hearing having been held before Alfred Rubinstein, Hearing Officer of the Department of Taxation and Finance, on March 25, 1957, at the office of the State Tax Commission, 50 Centre Street, New York, New York, at which hearing Frank J. Clark and taxpayers' representatives, Sidney Meyers, Esq. appeared, and the matter having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That the taxpayers, a partnership doing business under the firm name and style of James P. and Frank J. Clark, filed partnership and unincorporated business tax returns for 1950 and 1951, reporting partnership income and gains of \$50,550.25 for 1950 and partnership income and gains of \$13,050.97 for 1951; that taxpayers reported no unincorporated business tax for 1950 and 1951; that the Income Tax Bureau imposed unincorporated business taxes against the taxpayers in the amount of \$1,470.00 for 1950 and 1951, by notice of deficiency and statement of assessed changes (File No. T-525) based on findings that the entire partnership income of the taxpayers for each year was derived from carrying on an unincorporated business; that taxpayers filed a

The first part of the report deals with the general situation of the country.

The second part deals with the economic situation of the country.

The third part deals with the social situation of the country.

The fourth part deals with the political situation of the country.

The fifth part deals with the cultural situation of the country.

The sixth part deals with the environmental situation of the country.

The seventh part deals with the international situation of the country.

The eighth part deals with the future of the country.

The ninth part deals with the conclusion of the report.

The tenth part deals with the annexes of the report.

The eleventh part deals with the bibliography of the report.

The twelfth part deals with the index of the report.

The thirteenth part deals with the list of figures of the report.

The fourteenth part deals with the list of tables of the report.

The fifteenth part deals with the list of maps of the report.

The sixteenth part deals with the list of abbreviations of the report.

The seventeenth part deals with the list of symbols of the report.

The eighteenth part deals with the list of units of the report.

The nineteenth part deals with the list of dates of the report.

The twentieth part deals with the list of names of the report.

The twenty-first part deals with the list of places of the report.

The twenty-second part deals with the list of events of the report.

The twenty-third part deals with the list of organizations of the report.

The twenty-fourth part deals with the list of institutions of the report.

The twenty-fifth part deals with the list of departments of the report.

The twenty-sixth part deals with the list of ministries of the report.

The twenty-seventh part deals with the list of agencies of the report.

The twenty-eighth part deals with the list of committees of the report.

The twenty-ninth part deals with the list of commissions of the report.

petition for redetermination of deficiency or for refund for the years 1960 and 1961.

(2) That the taxpayers have been partners since 1947 engaged in the activities of real estate brokerage, insurance brokerage, purchases and sales of vacant land and buildings, building construction, management of real properties owned by themselves and owned by others; that the real properties purchased by the taxpayers, as partners, were held by them jointly; that the taxpayers' real properties were purchased and sold in the course of the taxpayers' real estate brokerage activities, having been listed for sale by the taxpayers, as broker, and having been purchased for their own account from listings supplied to them, as broker, by customers; that the taxpayers maintained one set of records for all of their business activities and recorded therein, in a single set of accounts, the entire income, gain, expense and disbursements attributable to all of their partnership activities without distinction, separation or allocation and reported the income and gain of all such activities on their partnership tax returns for 1960 and 1961; that the taxpayers reported their distributive shares of all such activities on their individual tax returns for 1960 and 1961 as income and gain from the partnership.

(3) That the taxpayers concede that the unincorporated business taxes imposed on them based on their partnership activities were properly imposed, except to the extent that such impositions include taxes based on income derived from holdings of real property.

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

DECREES:

(A) That during 1960 and 1961 the taxpayers, as partners,

THE UNIVERSITY OF CHICAGO

DEPARTMENT OF THE HISTORY OF ARTS

OFFICE OF THE DEAN

1100 EAST 58TH STREET

CHICAGO, ILLINOIS 60637

TEL: 773-936-5000

FAX: 773-936-5001

WWW.CHICAGOEDU.EDU

CHICAGO, ILLINOIS 60637

CHICAGO, ILLINOIS 60637

CHICAGO, ILLINOIS 60637

CHICAGO, ILLINOIS 60637

CHICAGO, ILLINOIS 60637

CHICAGO, ILLINOIS 60637

CHICAGO, ILLINOIS 60637

CHICAGO, ILLINOIS 60637

CHICAGO, ILLINOIS 60637

CHICAGO, ILLINOIS 60637

CHICAGO, ILLINOIS 60637

CHICAGO, ILLINOIS 60637

CHICAGO, ILLINOIS 60637

CHICAGO, ILLINOIS 60637

CHICAGO, ILLINOIS 60637

CHICAGO, ILLINOIS 60637

CHICAGO, ILLINOIS 60637

CHICAGO, ILLINOIS 60637

CHICAGO, ILLINOIS 60637

CHICAGO, ILLINOIS 60637

CHICAGO, ILLINOIS 60637

CHICAGO, ILLINOIS 60637

CHICAGO, ILLINOIS 60637

CHICAGO, ILLINOIS 60637

CHICAGO, ILLINOIS 60637

CHICAGO, ILLINOIS 60637

CHICAGO, ILLINOIS 60637

engaged in the activities of buying, selling, managing and holding real property; that said real property activities of the taxpayers were related and incidental to, connected with and an integral part of their building construction, real estate brokerage and insurance brokerage activities; that said real property activities of the taxpayers constituted the subject of business as dealers in real property; that none of the income and gains derived by the taxpayers from their partnership activities was so derived solely by reason of the holding, leasing or management of real property; that all of the income and gains the taxpayers derived from their partnership activities was so derived from a trade, business or occupation conducted by them within the meaning of section 703 of the Tax Law.

(B) That, accordingly, the notice of deficiency imposing unincorporated business taxes on the taxpayers in the sum of \$1,470.10 for 1960 and 1961 is correct; that the amount set forth therein is due and owing together with interest, if any, and other statutory charges; that said notice of deficiency does not include any tax or other charges which could not have been lawfully demanded, and that taxpayers' petition for redetermination of the refund with respect thereto be and the same are hereby denied.

Dated: Albany, New York this 27th day of September, 1967.

STATE TAX COMMISSION

/s/

JOSEPH H. MURPHY
Commissioner

/s/

JAMES R. MACDUFF
Commissioner

/s/

WALTER MACLYN CONLON
Commissioner

The first of these is the fact that the
 government has been unable to raise the
 necessary funds to meet its obligations.
 This is due to a number of factors, including
 the fact that the government has been unable to
 collect the necessary taxes, and the fact that
 the government has been unable to borrow the
 necessary funds from the international market.
 The second factor is the fact that the
 government has been unable to implement the
 necessary reforms to the economy. This has
 led to a number of problems, including
 inflation, unemployment, and a general
 decline in the standard of living. The third
 factor is the fact that the government has
 been unable to maintain a stable political
 environment. This has led to a number of
 problems, including corruption, and a
 general lack of confidence in the government.
 These factors have all contributed to the
 current economic crisis. The government must
 take immediate action to address these
 problems, or the crisis will continue to
 worsen.

is

YIFENG, H. AND JIN, Z. Q.

161

11/10/61 . 5. 25/11/61

41

WALTER WOLFE COITON

121