Unincorp. Bus. Tax Determin. A-Z

Dames & Moore

Commissioners Murphy, Macduff and Conlon

Solomon Sies, Hearing Officer

DAMES & MOORE (New York Regional Office)

Applications for Revision or Refund of Unincorporated Business Taxes Under Article 16-A of the Tax Law in Effect for the Fiscal Year Ending March 31, 1960 and Article 23 of the Tax Law for the Fiscal Year Ending March 31, 1961.

A hearing with respect to the above matter was held before me at 80 Centre Street, New York, N. Y. on February 23, 1966. The appearances and evidence produced were as shown in the stenographic minutes and the exhibits submitted herewith.

The issue involved herein is whether an engineering partnership, conducting business both within and without the State of New York is entitled to a professional exemption from unincorporated business taxes where all of the partners are not licensed to practice professional engineering in this State.

Dames & Moore, a California partnership, was organized in its present partnership form in 1933. It maintains its general or main office in Los Angeles and has branch or regional offices in 16 major cities in the United States, including the City of New York and in foreign countries. The partnership renders consulting engineering services relating to foundation investigation, engineering design and construction involving the application of earth sciences to the solution of engineering problems. During the years in issue the firm consisted of 2 senior general partners, 11 general partners and 2 corporate general partners. Semad Corporation (Dames spelled backwards) is solely owned by one of the senior general partners, Mr. Dames. Eroom Corporation (Moore spelled backwards) is owned and controlled by the other senior general partner, Mr. Moore. Both of these corporations are investment corporations having no employees or offices. Neither corporation practices engineering nor do either of these corporations have anything to do with the operation of the Regional New York Office of the partnership. The other two partners of the firm who are not engineers are Richard B. McGowan and John W. Maloney. Mr. McGowan is an accountant and has no engineering background. His functions in connection with the partnership are to oversee the accounting procedures and supervise the financial affairs of the firm. Mr. Maloney does have some engineering background

but is not a licensed engineer. His functions in connection with the firm are to engage in long range planning with respect to additional personnel and financial requirements of the firm which may be needed for expanded operations. Neither Mr. McGowan nor Mr. Maloney performs any engineering services nor do they sign any engineering reports or perform any service within this State.

The Regional New York Office of the partnership is located at 100 Church Street, New York City. During the years in issue, the services rendered by the New York Regional Office of the partnership were at all times under the supervision and control of two general partners, John F. Brennan and Gardner M. Reynolds, both of whom performed services on behalf of the firm in the New York office. Mr. Reynolds has a degree in civil engineering from Cornell University. He received his license to practice professional engineering in the State of New York by the New York State Education Department in 1953. Mr. Brennan has a degree in engineering from Columbia University and is licensed to practice professional engineering in the State of New York. The other 9 general partners are all licensed engineers, licensed by the various states in which the partnership maintains regional offices. During the years 1959 through 1961 the New York Regional Office employed approximately 18 or 19 engineers. Some were licensed in the State of New York and some were not. However, the services performed by the unlicensed engineers were always performed under the direct supervision and control of the New York partners who were professional engineers licensed by the Education Department of the State of New York. During the years 1959 through 1961, the letterhead of the firm used by the New York office listed only Mr. Reynolds and Mr. Brennan as the partners in the New York office.

The partnership filed unincorporated business tax returns for fiscal years ending 3/31/60 and 3/31/61 and paid unincorporated business taxes computed thereon. Thereafter it filed applications for refund thereof on the ground of professional exemption. The applications for refund were denied because all of the partners were not licensed to practice professional engineering in this State.

Although the Education Department of the State of New York has raised a question as to whether the partnership firm may engage in the practice of professional engineering in this State where all of the member partners do not hold New York State professional engineering licenses, the Division of Law of the State Education Department wrote the attorney for the taxpayers on October 13, 1964 that there is no particular problem involved in relation to the subject partnership of professional engineers "so long as no practice of engineering is carried on in the State by the persons not licensed in New York State".

The memorandum of Commissioner Edward D. Igoe, dated February 15, 1964, applicable to audit or conference matters pending before the Income Tax Bureau, states that professional status is not to be denied to a partnership consisting of one or more licensed or certified indi-

viduals and one or more unlicensed parties, unless the unlicensed or uncertified individuals are actually held out to the public as being engaged in the practice of the profession. In addition, it further states that professional status is not to be denied to a partnership consisting of both individuals licensed or certified by New York State and parties licensed or certified by another state if the partnership has offices both within and without New York State; that the final decision with respect to unincorporated business tax purposes may be denied if the Education Department refuses to grant the license or to endorse the out of state licenses or certificate.

I am, therefore, of the opinion that the taxpayers are entitled to an exemption from unincorporated business tax in accordance with the provisions of Section 386, Article 16-A of the Tax Law with respect to the fiscal year ending 3/31/60 and subdivision (c) Section 703, Article 23 of the Tax Law with respect to the fiscal year ending 3/31/61.

For the reasons stated above, I recommend that a determination be made by the Tax Commission in the form submitted herewith.

APR 17 1967

SOLOMON SIES

Hearing Officer

Approved

Approved

STATE OF NEW YORK

STATE TAX COMMISSION

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IN THE MATTER OF THE APPLICATION

OF

DAMES AND MOORE (NEW YORK REGIONAL OFFICE)

FOR REVISION OR REFUND OF UNINCORPORATED BUSINESS TAXES UNDER ARTICLE 16-A OF THE TAX LAW IN EFFECT FOR THE FISCAL YEAR ENDING MARCH 31, 1960 AND ARTICLE 23 OF THE TAX LAW FOR THE FISCAL YEAR ENDING MARCH 31, 1961.

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The above named partnership having filed applications for revision or refund of unincorporated business tax under Article 16-A of the Tax Law in effect for the fiscal year ending March 31, 1960 and Article 23 of the Tax Law for the fiscal year ending March 31, 1961 and a formal 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 23rd day of February, 1966, before Solomon Sies, Hearing Officer of the Department of Taxation and Finance at which hearing Gardner E. Reynolds, one of the general partners appeared and testified and the partnership having been represented by Paul, Weiss, Rifkind, Wharton & Garrison, Esqs., by Allan Blumstein, Esq. and Marvin R. Alpern, Esq., of Counsel, and the matter having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That Dames & Moore New York Regional Office filed Partnership and Unincorporated Business Tax Returns for the fiscal years ending 3/31/60 and 3/31/61 on July 15, 1960 and July 12, 1961, respectively, and paid unincorporated business taxes in the sum of $[illegible] for fiscal year ending 3/31/60 and $[illegible] for fiscal year ending 3/31/61; that on July 16, 1962, the partnership filed applications for refund of the unincorporated business taxes paid for the abovementioned years, claiming exemption therefrom upon the ground that they are engaged in the practice of professional engineering; that the applications for refund were denied because all of

the partners were not licensed to practice professional engineering in the State of New York.

(2) That Dames & Moore, a California partnership, was organized in its present partnership form in 1938; that it maintains its general or main office in Los Angeles, Cal. and has branch or regional offices in 10 major cities in the United States including the City of New York and in foreign countries; that the partnership renders consulting engineering services relating to foundation investigation, engineering design and construction involving the application of earth sciences to the solution of engineering problems; that during the years in issue the partnership firm consisted of 2 senior general partners, 11 general partners and 2 corporate general partners; that the aforementioned corporations were organized under the laws of the State of California and do not conduct any business in this State; that Semad Corporation (Dames spelled backwards) is solely owned by one of the senior general partners, Mr. Dames; that Eroom Corporation (Moore spelled backwards) is owned and controlled by the other senior partner, Mr. Moore; that both of these corporations are investment corporations having no employees or offices; that neither corporation practices engineering nor do either of these corporations have anything to do with the operation of the regional New York office of the partnership; that the other two partners of the firm who are not engineers are Richard E. McKeown and John V. Maloney; that Mr. McKeown is an accountant and has no engineering background; that his functions in connection with the partnership are to oversee the accounting procedures and supervise the financial affairs of the firm; that Mr. Maloney does have some engineering background but is not a licensed engineer; that his functions in connection with the firm are to engage in long range planning with respect to additional personnel and financial requirements of the firm which may be needed for expanded operations; that neither Mr. McKeown nor Mr. Maloney perform any engineering services nor do they sign any engineering reports or perform any services within this state.

(3) That the regional New York office of the partnership is located at 100 Church Street, New York, N. Y.; that the New York office renders consulting engineering services previously described; that during the years in issue, the services rendered by the New York regional office of the partnership were at all times under the direct supervision and control of two general partners, John F. Brennan and Gardner H. Reynolds, both of whom performed services on behalf of the firm in the New York office; that Mr. Reynolds has a degree in civil engineering from Cornell University; that he received his license to practice professional engineering in the State of New York by the New York State Education Department in [illegible]; that Mr. Brennan has a degree in engineering from Columbia University and is licensed to practice professional engineering in the State of New York; that the other 9 general partners are all licensed engineers, licensed by the various states in which the partnership maintains regional offices; that during the years 1959 through 1961 the New York regional office employed approximately 18 or 19 engineers; that some were licensed in the State of New York and some were not; that, however, the services performed by the unlicensed engineers were always performed under the direct supervision and control of the New York partners who were professional engineers licensed by the Education Department of the State of New York; that during the years 1959 through 1961, the letterhead of the firm used by the New York office listed only Mr. Reynolds and Mr. Brennan as the partners in the New York office.

(4) That the partnership is engaged in the practice of professional engineering; that more than 80% of its income attributable to sources within this State is derived from the personal services actually rendered by the members of the firm licensed as professional engineers in the State of New York and that capital is not a material income producing factor; that the professional activities of the firm within the State of New York are directed solely by the New York partners licensed to practice professional engineering in this State and by no one else; that it does not appear that any member of the partnership firm who is not licensed to practice

professional engineering in this State has engaged in such practice of professional engineering within this State; that the Education Department of the State of New York has ruled that the New York regional office of [illegible] is authorized to practice professional engineering in this State so long as no practice of professional engineering is carried on in this State by the members of the partnership not licensed in this State.

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

The State Tax Commission hereby

DETERMINES:

(A) That the activities of the subject partnership for the fiscal year ending 3/31/60 constituted the practice of professional engineering exempt from unincorporated business tax in accordance with the intent and meaning of Section 386, Article 16-A of the Tax Law; that the activities of the subject partnership for fiscal year 3/31/61 constituted the practice of professional engineering exempt from unincorporated business tax within the intent and meaning of Section 703 (c), Article 23 of the Tax Law.

(B) That, accordingly, the unincorporated business taxes paid by the taxpayer partnership for the fiscal years ending 3/31/60 and 3/31/61 were not lawfully due and owing; that the applications for refund for said years are hereby granted; that there be refunded to the taxpayer partnership the sum of $[illegible], without interest, for the fiscal year ending 3/31/60 and the sum of $[illegible], with any interest that may be lawfully due and owing for the fiscal year ending 3/31/61.

AND IT IS SO ORDERED.

DATED, Albany, N. Y. the 1st day of May, 1967.

STATE TAX COMMISSION

/s/ JOSEPH H. MURPHY
PRESIDENT

/s/ JAMES R. MACDUFF
COMMISSIONER

/s/ WALTER MACLYN CONLON
COMMISSIONER