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Unincorp Bus Dex BUREAU OF LAW Determinations 9-Z

MEMORANDUM Erikason Paul S.

TO:

State Tax Commission

FROM:

Solomon Sies, Hearing Officer

SUBJECT:

PAUL S. KRIKSSON

1956 Assessment #8 777982 1957 Assessment #8 777983 1958 Assessment #48 017522

Article 16-A

A hearing in the above matter was held at the New York office on May 19, 1964.

The issues involved are: (a) whether the tampayer's activities as an independent agent reported by him as "editor and public relations consultant" and more fully described below constituted the carrying on of an unincorporated business or were exempt from unincorporated business tax as a recognised profession; and (b) whether the salary income of the tampayer was integrated with his business income so as to constitute additional business income subject to unincorporated business tax.

In 1954 the tarpayer entered into an agreement with Source McGann, Inc. as an independent agent whereby he would receive fees or commissions for the acquisition by him of material which the firm contracted for publication. What the tarpayer did was to conscive and develope ideas for books, convey the ideas to writers, edit the seripts and present the same to the firm for possible publication. He did not write the books. As an illustration, the tarpayer felt there was a need for a book on proper heme lighting. He wrote to General Electric Go. proposing a book on "How to Light Your Home" which would be useful to their Lamp Bivision in promoting the sale of light bulbs. G. E. agreed to purchase the paperback editions of this book with the understanding that Goward-McGann would publish the hard cover edition with no guarantee from 6.E. on the purchase of such copies. The book was actually written and illustrated by two persons, a free lance illustrator and a free lance writer who were paid by Goward-McGann and G.E. but the names of the author and the illustrator as it actually appeared on the published copy of the book was that of the design engineer of G.E. and an officer of the American Institute of Decorators. (Min. of Hrg. pp 7 & 8). The tarpayer did not file unincorporated business tax returns but listed the insene from this source on Schedule "A" of his returns for the years 1956 and 1957 as "Editor and Public Belations Consultant".

PEO PAUL S. ERITASON

The taxpayer entered into the employ of 6.P. Putnam's Some on January 1, 1955 as publicity and pronotional director. He performed his duties at the office of said firm and received a fixed salary. He was under the direction and control of 6.P. Putnam's Some, who withheld Pederal income taxes and paid accial security taxes, unemployment insurance and workmen's compensation on his behalf. The taxpayer severed his employment with 6.P. Putnam's Some in September, 1956 and was, thereafter, employed by Rick Explinger at 119 West 57th Street, Hew York City, as publicity and pronotional director for which he received a fixed salary. The taxpayer was under the direction and centrol of Rick Explinger. All of the taxpayer's expenses in semmestion with said activities were paid by Rick Explinger. Bick Explinger also withheld Federal income taxes, deducted social security taxes and paid unemployment insurance and workmen's compensation on behalf of the taxpayer. His duties for both firms were assentially the same or similar and consisted of assisting in general office routine, contacting reviewers and arranging radio, television and newspaper interviews.

During the years in issue, the tempayer's activities in connection with the acquisition of material to be published were conducted from his home evenings and weekends and were unrelated to his services as an employee either for G.P. Putmam's Sons or Mick Taplinger. In July, 1957, the arrangement between the tampayer and Coward-McCann was terminated and replaced by a new agreement between G.P. Putmam's Sons on the one hand and the tampayer and Mick Implinger on the other. In 1958 this latter agreement was also terminated. Subsequently, tampayer formed his own publishing corporation, Faul S. Eriksson, Inc.

The tampeyer received a B.A. degree from Middlebury Sollege, Vermont in 1940. He worked for Macmillan So. for one year and then taught private school in Flainfield, M.J. for one year. After his discharge from the Army, the tampayer was employed as editor for John Bay Company from 1946 to 1951, reading and editing manuscripts and helping out with publicity and advertising. Thereafter he was employed by Ronald Press as a trade editor for about 9 menths performing duties similar to those performed by him for John Bay Company.

To qualify for exemption from unincorporated business tax as a "professional" an individual is required to have knowledge of an advanced type in a given field of science or learning gained by a prolonged course of specialized instruction or study which is essential to produce the income derived therefrom. Sundbarg v. Brazilai, 7 A.B. 3d 15. In the instant case, the tempayor's activities were similar to that of a theatrical agent who promotes and publicases the talents of others. I am of the opinion, therefore, that the independent activities of the tempayor in the acquisition of material for publication does not constitute the practice of a recognised profession in eccertance with Section 386 of the Tax Law.

I am of the further opinion that the salary income was not inter-related or integrated with the taxpayer's business income and did not constitute receipts of a business regularly carried on by him. (Matter of Arnold S. & Miriam Goren, formal hearing determination d. 9/27/66, subsequently rescinded). It is to be noted that the Income Tax Bureau cancelled, in part, the assessment for 1956, to the extent of \$87.46 upon the ground that the salary income from G.F. Putnam's Sons was not interrelated with the business income. It appears that there is no essential difference between the nature of the work performed by the taxpayer as an employee for Dick Taplinger and that performed as an employee for G.P. Putnam's Sons.

The taxpayer's net business income for the years 1956 and 1958 amounted to \$5,849.24 and \$2,758.19, respectively. Since the taxpayer is entitled to statutory credit of \$5,000 and salary credit, he would not be liable for unincorporated business tax for said years. The assessments for those years (Assessment #B 777982 and AB 017522) should be cancelled in full. The assessment for 1957 should be modified by eliminating the salary income from the computation for unincorporated business tax purposes. I have recomputed the unincorporated business tax for 1957 as set forth in the proposed determination.

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

MAR 24 1967

SOLOMON SIES

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/s/	MART IN	SCHAPIRO	1/1	5/68	
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/s/ SAUL HECKELMAN 1/15/68

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STATE OF NEW YORK STATE TAX CONNISSION

IN THE MATTER OF THE APPLICATIONS

PAUL S. BRIESSON

FOR REVISION OR REPUND OF UNINCORPORATED BUSINESS TAXES UNDER ARTICLE 14-A OF THE TAX LAW FOR THE YEARS 1956, 1957 AND 1958

Paul S. Brikssen, the taxpayer herein, having filed applications for revision or refund of unimorperated business taxes under Article 16-A of the Tax Low for the years 1956, 1957 and 1958, and a hearing having been held in connection therewith at the affice of the State Tax Commission, 80 Contro Street, New York, New York, on the 19th day of Nay, 1964, before Science Sies, Manring Officer of the Department of Taxation and Finance, at which hearing the taxpayer appeared personnlly and testified and was represented by Nerman T. Upoett, G.F.A., and the matter having been duly examined and considered.

The State Tax Commission hereby finds:

(1) That the taxpayer filed personal impute tax returns for the years 1956 and 1957 in which he reported salary income received during said years; that, in addition, the taxpayer reported income on Schedule "A" of said returns as "editor and public relations consultant"; that he reported not income from business or preferation in the assumes of \$5,849.24 and \$8,787.02 for the years 1956 and 1957, respectively; that the taxpayer did not file uninscripteded business tax returns for said years contending that his activities as "editor and public relations consultant" constituted the practice of a pre-fession except from unincorporated business tax; that on May 6, 1960,

the Department of Taxation and Finance ande additional assessments against the taxpayer for the years 1956 and 1957 (Assessment Mos?

by the tempsyor on Schodule "A" of his returns subject to unknowpersond business tax and, in addition, instanted the enlary income as additional business income subject to unknowneeded business they that an 3/2A/63, the assessment for the year 1956 was assested, in part, to the extent of 607,AR upon the grand that the salary income reported by tempsyor as reasted from 0, 7, Julians's Scan for the year 1956 did not constitute regolyte connected with his settyibles on an independent agent and, therefore, was not decord exhict to unincorporated business tax.

- request ands by the Popartment of Tamelian and Plantes, filled an unincorporated business tax votate (Farm If 200) for the year 1950 indicating total impact from business as an independent agent in the sun of \$2,750,29 upon which we tax use dust that an August 9, 1960, the Popartment of Tamelian and Plantes unde an additional assessment of unincorporated business tax against the tempayor for the year 1950 (Assessment No. AN 017522) helding his activities as more fully described in Planting (b) below subject to unincorporated business tax and further helding that the salary insome reactive by the tempayor during said year from Pick Suplinger countituted additional business insome subject to unincorporated business insome subject to unincorporated business insome subject to unincorporated business tax.
- (3) That the temporer received a 3.4. degree from Middleburg College, Vermont in 1980; that, thereafter, he worked for Mandillan Co. and then tempts private school in Finishick, New Jersey for and years that after his discharge from the Army in 1986, he was employed as allter for Jehn Day Company for about five years, reading and editing memorripts and helping out with publicity and advertisings that, thereafter, he was employed by Rosal: From as a trade editor, for about nice mention, porferning duties similar to those performed by him for Jehn Day Company.

- with Counti-NaCoun, Inc. theyeby he would receive fees or countedians, as an independent agent, for the acquisition by his of unterfal which the firm contracted for publications that in connection with , end activities the tempaper conceived and developed ideas for bushes conveyed the ideas to writers and edited the unamourlying that the tempaper did not participate in the writing of said beauty that the tempaper's activities as an independent agent were conducted from his home evenings and vestcode.
- (5) That more than 80% of the group impose received by the tempoyer from his independent activities as more fully set forth in Finding (b) above use derived from the personal services actually rendered by him and aspital use not an impose producing factor?
- (6) That the tamperer entered into the employ of G. F. Patnom's Same on Japaney 1, 1955 as publicity and promotional directors that he performed his duties at the office of sold firm and received a fixed enlary; that he was under the direction and control of G. P. Putnam's Some, who withhold Pedarul impose temes and pold suctal security taxes, unemployment impurance and verticents compensation on his behalf; that the tumpayer severed his employment with C. F. Putnames Some in September, 1956 and was thereafter employed by Dick Toplinger at 119 Vest 57th Street, New York City, as publisher and promotional director for which he received a fixed salary; that the temperar was under the direction and control of Pick Toplinger; that all of the taxpayor's expenses in consection with said activities were paid by Dick Taplingers that Dick Taplinger also withhold Federal income taxes, deducted spaini security taxes and paid unsupleyment impurates and vertains componenties on botalf of the tempeyor; that his duties for both firms were especially the same or similar and consisted of assisting in general office restine, contacting seriouses and arrenging radio, tolovision and newspaper interviews; that the relationship of the tampeyer with Dick Taplinger was that of employee-

- with Commission, Inc. shorely to would receive fees or commissions, as an independent agent, for the acquisition by him of unterfal which the firm contracted for publications that in connection with . said activities the taxonyer conscived and developed ideas for bushes conveyed the ideas to writers and edited the managerites that the taxonyer did not participate in the writing of said beauty that the taxonyer's activities as an independent agent were confused from his bone evenings and vertends.
- (5) That more than 80% of the group impose resolved by the tempoyer from his independent notivities as more fully not furth in Finding (4) above one derived from the personal services astunity rendered by his and copital one not on impose producing factors.
- (6) That the tampayer entered into the employ of G. F. Patroni's Some on January 1, 1955 no publicity and premotional directors that he perferred his duties at the effice of said fire and received a fixed salary; that he was under the direction and control of G. P. Putmante Some, who withhold Poderal impose terro and poid spoisi courtly taxes, unexployment impurance and works with companionism on his bohelf; that the tempeyor severed his employment with G. F. Putman's Some in September, 1936 and use thereofter employed by Dick Taplinger at 119 Yest 57th Street, New York City, as published and promotional director for which he received a fixed colony; that the tempeyor was under the direction and control of Dick Toplinger; that all of the tempsyor's expenses in connection with said activities were paid by Dick Replinger; that Dick Toplinger also withheld Federal impose taxes, deducted social security taxes and puts unsuplement incurance and vertices of compounties on behalf of the temperors that his duties for both firms were equentially the same or cinties and equatored of accinting in general office routine, contacting reviewers and arranging radio, television and newspaper interviews; that the relationship of the taxpayer with Dick Emplinger was that of employee-

employer and not that of an independent contractor.

(7) That the activities of the tempeyer as behalf of Dick Implies, more fully described in Finding (6) above, were not interrelated or connected with the tempeyer's business activities as more fully described in Finding (4) above and were not in furthersuce of said business.

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

THE PERSON

- (A) That the activities of the tempoyer in the sequinities of material to be contracted for publication did not countilwood the processes of a recognized profession but countilwood the envying on of an unincorporated business solely within the State of New York subject to unincorporated business tax in accordance with the previous of Section 386, Article 16-A of the Tax Law.
- Tapling or for services perferred as publicity and presentants.

 director were not interrelated or connected with or in furthermore of his business notivities more fully set forth in Finding (3) above so as to constitute additional business income subject to unincorporated business tax; that said income constituted salary or wages as an employee except from the imposition of unincorporated business tax.

 In accordance with the provisions of Section 386 of the Tax Inne.
- (C) That, accordingly, the tence or other charges imminded in the accommonts and against the tempeyer for the years 1956 and 1958 (Accommont Nos. 3 777962 and AB C17522, respectively) were not lawfully due and owing and not lawfully demanded and that the same be and are hereby cancelled in full.
- (D) That, accordingly, the assessment make against the tempeyor for the year 1957 (Assessment No. 3 777983) is hereby modified so as to exclude the salary impose included therein and is hereby recomputed as follows:

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Mainterpretated business tax at 45 statutery exemptions

together with any other charges or interest that may be included the cash owing thereasy that the adjacent accusament is harely exceeds to the actual of \$1,76,769 that the tangener's application for switches or refund filed with respect to said accommon, exact as hereix andicina, to task the same is hereby desired.

AND 22 25 50 (MDMRS).

Dated: Allowy, New York, on the 18th day of January

1967

STATE TAX CONSTRUCTOR

Bluse Mauley