

BUREAU OF LAW

MEMORANDUM

Unincorp. Bus. Tax
Determinations A-2
Eriksson, Paul S.

TO: State Tax Commission

FROM: Solomon Sies, Hearing Officer

SUBJECT: PAUL S. ERIKSSON

1956 Assessment #B 777982
1957 Assessment #B 777983
1958 Assessment #AB 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 taxpayer'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 recognized profession; and (b) whether the salary income of the taxpayer was integrated with his business income so as to constitute additional business income subject to unincorporated business tax.

In 1954 the taxpayer entered into an agreement with Goward 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 taxpayer did was to conceive and develop ideas for books, convey the ideas to writers, edit the scripts and present the same to the firm for possible publication. He did not write the books. As an illustration, the taxpayer felt there was a need for a book on proper home lighting. He wrote to General Electric Co. proposing a book on "How to Light Your Home" which would be useful to their Lamp Division 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 G.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 taxpayer did not file unincorporated business tax returns but listed the income from this source on Schedule "A" of his returns for the years 1956 and 1957 as "Editor and Public Relations Consultant".

RE: PAUL S. ERIKSSON

The taxpayer entered into the employ of G.P. Putnam's Sons on January 1, 1955 as publicity and promotional director. He performed his duties at the office of said firm and received a fixed salary. He was under the direction and control of G.P. Putnam's Sons, who withheld Federal income taxes and paid social security taxes, unemployment insurance and workmen's compensation on his behalf. The taxpayer severed his employment with G.P. Putnam's Sons in September, 1956 and was, thereafter, employed by Dick Taplinger at 119 West 57th Street, New York City, as publicity and promotional director for which he received a fixed salary. The taxpayer was under the direction and control of Dick Taplinger. All of the taxpayer's expenses in connection with said activities were paid by Dick Taplinger. Dick Taplinger 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 essentially 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 taxpayer'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. Putnam's Sons or Dick Taplinger. In July, 1957, the arrangement between the taxpayer and Goward-McGann was terminated and replaced by a new agreement between G.P. Putnam's Sons on the one hand and the taxpayer and Dick Taplinger on the other. In 1958 this latter agreement was also terminated. Subsequently, taxpayer formed his own publishing corporation, Paul S. Eriksson, Inc.

The taxpayer received a B.A. degree from Middlebury College, Vermont in 1940. He worked for Macmillan Co. for one year and then taught private school in Plainfield, N.J. for one year. After his discharge from the Army, the taxpayer was employed as editor for John Day 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 months performing duties similar to those performed by him for John Day 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. Sundberg v. Braggini, 7 A.B. 2d 15. In the instant case, the taxpayer's activities were similar to that of a theatrical agent who promotes and publicizes the talents of others. I am of the opinion, therefore, that the independent activities of the taxpayer in the acquisition of material for publication does not constitute the practice of a recognized profession in accordance 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 Ceren, 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.P. 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
Hearing Officer

/s/ MARTIN SCHAPIRO 1/15/68
Approved

/s/ SAUL HECKELMAN 1/15/68
Approved

1-16-68

**STATE OF NEW YORK
STATE TAX COMMISSION**

**IN THE MATTER OF THE APPLICATIONS
OF**

PAUL S. ERIKSSON

**FOR REVISION OR REFUND OF UNINCORPORATED
BUSINESS TAXES UNDER ARTICLE 16-A OF THE
TAX LAW FOR THE YEARS 1956, 1957 AND 1958**

Paul S. Eriksson, the taxpayer herein, having filed applications for revision or refund of unincorporated business taxes under Article 16-A of the Tax Law for the years 1956, 1957 and 1958, and a hearing having been held in connection therewith at the office of the State Tax Commission, 80 Centre Street, New York, New York, on the 19th day of May, 1964, before Solomon Sles, Hearing Officer of the Department of Taxation and Finance, at which hearing the taxpayer appeared personally and testified and was represented by Herman T. Uscott, C.P.A., and the matter having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That the taxpayer filed personal income 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 net income from business or profession in the amounts of \$5,849.24 and \$8,787.02 for the years 1956 and 1957, respectively; that the taxpayer did not file unincorporated business tax returns for said years contending that his activities as "editor and public relations consultant" constituted the practice of a profession exempt from unincorporated business tax; that on May 6, 1960, the Department of Taxation and Finance made additional assessments against the taxpayer for the years 1956 and 1957 (Assessment Nos. 1

✓ B 777982 and B 777983, respectively, holding the activities reported by the taxpayer on Schedule "A" of his returns subject to unincorporated business tax and, in addition, included the salary income as additional business income subject to unincorporated business tax; that on 1/24/63, the assessment for the year 1956 was cancelled, in part, to the extent of \$87.42 upon the ground that the salary income reported by taxpayer as received from G. F. Putnam's Sons for the year 1956 did not constitute receipts connected with his activities as an independent agent and, therefore, was not deemed subject to unincorporated business tax.

(2) That on March 19, 1962 the taxpayer, pursuant to a request made by the Department of Taxation and Finance, filed an unincorporated business tax return (Form IT 202) for the year 1958 indicating total income from business as an independent agent in the sum of \$2,758.19 upon which no tax was due; that on August 9, 1962, the Department of Taxation and Finance made an additional assessment of unincorporated business tax against the taxpayer for the year 1958 (Assessment No. AB 017522) holding his activities as more fully described in Finding (4) below subject to unincorporated business tax and further holding that the salary income received by the taxpayer during said year from Dick Timplinger constituted additional business income subject to unincorporated business tax.

(3) That the taxpayer received a B.A. degree from Middlebury College, Vermont in 1940; that, thereafter, he worked for Hamilton Co. and then taught private school in Plainfield, New Jersey for one year; that after his discharge from the Army in 1946, he was employed as editor for John Day Company for about five years, reading and editing manuscripts and helping out with publicity and advertising; that, thereafter, he was employed by World Press as a trade editor, for about nine months, performing duties similar to those performed by him for John Day Company.

(4) That in 1954, the taxpayer entered into an agreement with Coward-McCann, Inc. whereby he would receive fees or commissions, as an independent agent, for the acquisition by him of material which the firm contracted for publication; that in connection with said activities the taxpayer conceived and developed ideas for books; conveyed the ideas to writers and edited the manuscripts; that the taxpayer did not participate in the writing of said books; that the taxpayer's activities as an independent agent were conducted from his home evenings and weekends.

(5) That more than 80% of the gross income received by the taxpayer from his independent activities as more fully set forth in Finding (4) above was derived from the personal services actually rendered by him and capital was not an income producing factor;

(6) That the taxpayer entered into the employ of G. F. Putnam's Sons on January 1, 1955 as publicity and promotional director; that he performed his duties at the office of said firm and received a fixed salary; that he was under the direction and control of G. F. Putnam's Sons, who withheld Federal income taxes and paid social security taxes, unemployment insurance and workmen's compensation on his behalf; that the taxpayer severed his employment with G. F. Putnam's Sons in September, 1956 and was thereafter employed by Dick Taplinger at 119 West 57th Street, New York City, as publicity and promotional director for which he received a fixed salary; that the taxpayer was under the direction and control of Dick Taplinger; that all of the taxpayer's expenses in connection with said activities were paid by Dick Taplinger; that Dick Taplinger also withheld Federal income taxes, deducted social security taxes and paid unemployment insurance and workmen's compensation on behalf of the taxpayer; that his duties for both firms were essentially the same or similar and consisted of assisting in general office routine, contacting reviewers and arranging radio, television and newspaper interviews; that the relationship of the taxpayer with Dick Taplinger was that of employee.

(4) That in 1954, the taxpayer entered into an agreement with Conrad-McCann, Inc. whereby he would receive fees or commissions, as an independent agent, for the acquisition by him of material which the firm contracted for publication; that in connection with said activities the taxpayer conceived and developed ideas for books; conveyed the ideas to writers and edited the manuscripts; that the taxpayer did not participate in the writing of said books; that the taxpayer's activities as an independent agent were conducted from his home evenings and weekends.

(5) That more than 80% of the gross income received by the taxpayer from his independent activities as more fully set forth in Finding (4) above was derived from the personal services actually rendered by him and capital was not an income producing factor.

(6) That the taxpayer entered into the employ of G. F. Putnam's Sons on January 1, 1955 as publicity and promotional director; that he performed his duties at the office of said firm and received a fixed salary; that he was under the direction and control of G. F. Putnam's Sons, who withheld Federal income taxes and paid social security taxes, unemployment insurance and workmen's compensation on his behalf; that the taxpayer severed his employment with G. F. Putnam's Sons in September, 1956 and was thereafter employed by Dick Tiplinger at 119 West 57th Street, New York City, as publicity and promotional director for which he received a fixed salary; that the taxpayer was under the direction and control of Dick Tiplinger; that all of the taxpayer's expenses in connection with said activities were paid by Dick Tiplinger; that Dick Tiplinger also withheld Federal income taxes, deducted social security taxes and paid unemployment insurance and workmen's compensation on behalf of the taxpayer; that his duties for both firms were essentially the same or similar and consisted of assisting in general office routine, contacting reviewers and arranging radio, television and newspaper interviews; that the relationship of the taxpayer with Dick Tiplinger was that of employee.

employer and not that of an independent contractor.

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

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 in the acquisition of material to be contracted for publication did not constitute the practice of a recognized profession but constituted the carrying on of an unincorporated business solely within the State of New York subject to unincorporated business tax in accordance with the provisions of Section 386, Article 16-A of the Tax Law.

(B) That the income received by the taxpayer from Dick Taplinger or for services performed as publicity and promotional director were not interrelated or connected with or in furtherance of his business activities 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 exempt from the imposition of unincorporated business tax in accordance with the provisions of Section 386 of the Tax Law.

(C) That, accordingly, the taxes or other charges included in the assessments made against the taxpayer for the years 1956 and 1958 (Assessment Nos. B 777982 and AB 017522, 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 made against the taxpayer for the year 1957 (Assessment No. B 777983) is hereby modified so as to exclude the salary income included therein and is hereby recomputed as follows:

1257

Total business income		60,737.52
Salary allowance	61,737.40	
Statutory exemption	<u>1,000.00</u>	<u>6,732.02</u>
Balance subject to unincorporated business tax		62,005.52
Unincorporated business tax at 4%	2,480.22	
Statutory exemption	<u>1257</u>	

Net unincorporated business tax due \$40.91

together with any other charges or interest that may be lawfully due and owing thereon; that the aforementioned assessment is hereby cancelled to the extent of \$134.92; that the taxpayer's application for revision or refund filed with respect to said assessment, except as herein modified, be and the same is hereby denied.

AND IT IS SO ORDERED.

Dated: Albany, New York, on the 18th day of January, 1967.⁸

STATE TAX COMMISSION

 ASSISTANT
Bruce Mauley
 COMMISSIONER

 COMMISSIONER