

Unincorp. Bus. Tax
BUREAU OF LAW
MEMORANDUM

Determinations A-Z

Klein, Herbert

X - reg

TO: **Commissioners Murphy, Conlon and MacDuff**
 FROM: **Francis V. Bow, Hearing Officer**
 SUBJECT: **HERBERT KLEIN & GEORGE MITTLEMAN**

U BT Determin.

Mittleman, George

**For Revision or Refund of Unincorporated
 Business Taxes Under Article 16-A of the
 Tax Law for the Year 1956**

A hearing with reference to the above matter was held before me on November 17, 1966 at 80 Centre Street, New York, New York. The appearances and the evidence produced were as shown in the stenographic minutes and exhibits submitted herewith.

The issue involved in this matter is whether the income from the activities of the taxpayers as copartners performing services as professional engineers is subject to the unincorporated business tax where one of the partners was not licensed as a professional engineer in New York State.

The taxpayers filed partnership and unincorporated business tax returns for 1956 in which they reported net income of \$15,610.90 each from their business as supervising engineers claiming that the income was exempt from the unincorporated business tax.

An assessment for 1956 was issued on April 20, 1959 (Assessment No. B 990783) assessing unincorporated business tax due in the amount of \$811.84 on the basis that the taxpayers' activities reported on their return constitute the carrying on of an unincorporated business, the income of which was subject to the unincorporated business tax.

During 1956 the taxpayers, both residing in New York State, formed a partnership for the purpose of performing a contract entered into with Matthew L. Carroll, Inc. acting as supervising engineers of nine construction projects at the request of the American Surety Company, the Surety Company which issued performance bonds on the projects. Eight of the projects were located in New York State. One was located in New Jersey. Both of the taxpayers were paid \$13,000 for their services in connection with the nine projects at the rate of \$3,000 per month. The partnership had no office outside of New York State. Both taxpayers were graduate engineers. George Mittleman, one of the active members of the partnership, was not licensed as a professional engineer in New York State. Upon

BUREAU OF LAW
MEMORANDUM

TO:

FROM:

SUBJECT:

12-22-67

[Faint, mostly illegible memorandum text follows, consisting of several paragraphs.]

completion of the project at the end of the year, the partnership was dissolved.

The facts in this matter are similar to the determination in the Matter of Gunklin & Davis in which one of two partners, who acted as a "team" in land surveying, was not a licensed land surveyor where it was held that the partnership was not engaged in the practice of an exempt profession for unincorporated tax purposes. A copy of Council Best memorandum in that matter dated October 2, 1961 is attached hereto. As pointed out in a letter of Commissioner Murphy dated March 1, 1967, a copy of which is attached hereto, if the unlicensed member of a professional partnership was not practicing the profession and was not holding himself out to the public as engaged in such practice no unincorporated business taxes would be assessed.

For the reasons stated above, I recommend that the determination of the State Tax Commission in the above matter denying the taxpayers' application be substantially in the form submitted herewith.

/s/

FRANCIS V. DOW

~~REPLYING OFFICER~~

FVD:sc
Encs.

June 16, 1967

7-6-67

STATE OF NEW YORK

STATE TAX COMMISSION

.....
IN THE MATTER OF THE APPLICATION

OF

HERBERT KLEIN & GEORGE KENTLEMAN

**FOR REVISION OR REFUND OF UNINCORPORATED
BUSINESS TAXES UNDER ARTICLE 16-A OF THE
TAX LAW FOR THE YEAR 1936**
.....

The taxpayers herein having filed an application for revision or refund of unincorporated business taxes imposed under Article 16-A of the Tax Law for the year 1936 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 November 17, 1936 before Francis V. Dow, Hearing Officer of the Department of Taxation and Finance, at which hearing the taxpayer, Herbert Klein, appeared and testified and the record having been duly examined and considered,

The State Tax Commission hereby finds:

(1) Taxpayers filed a partnership and unincorporated business tax return for 1936 in which they reported net income of \$13,610.50 each from their business as supervising engineers and claimed that such income was exempt from the unincorporated business tax.

(2) That an assessment for 1936 was issued on April 22, 1939 (Assessment No. B 390783) assessing unincorporated business tax due in the amount of \$213.88 on the basis that the taxpayers' activities reported on their return constitute the carrying on of an unincorporated business, the income of which was subject to the unincorporated business tax.

(3) That both of the taxpayers resided in New York State; that during 1956 the taxpayers formed a partnership for the purpose of acting as supervising engineers in the completion of nine construction contracts entered into by Matthew L. Carroll, Inc. at the request of the American Surety Company, the Surety Company which issued performance bonds on the contracts; that the partnership had no office outside of New York State.

(4) That eight of the construction contracts dealt with projects in New York State; that one of the construction contracts was for a project in New Jersey; that the contract of the taxpayers with the Matthew L. Carroll, Inc. provided for the payment of \$33,000 for the completion of the nine projects, and did not provide separate amounts for the completion of each of the projects.

(5) That the taxpayers performed no services for any other person or company in addition to their services rendered in completion of the nine construction projects; that upon completion of the said projects the partnership was dissolved.

(6) That both of the taxpayers are graduate engineers; that the taxpayer, George Hittelman, was an active member of the partnership and was not licensed as a professional engineer in the State of New York.

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

DETERMINES:

(A) That the income of the taxpayers as copartners in 1956 from their activities as supervising engineers was not exempt from the unincorporated business tax since all of the members of the

partnership failed to comply with Section 7209 of the Education Law by not being licensed as professional engineers in New York State and accordingly were not practicing a profession entitling them to a professional exemption.

(3) That the unincorporated business taxes assessed against the taxpayers for the year 1936 (Assessment No. B 395723) were properly and timely issued; that the said assessment does not include any tax or other charge which could not be lawfully demanded; and that the taxpayers' application for revision or refund of said taxes is hereby denied.

DATED: Albany, New York on this 12th day of July, 1937.

SEAL OF THE COMMISSIONER

/s/

JOSEPH H. MURPHY
COMMISSIONER

/s/

JAMES R. MACDUFF
COMMISSIONER

/s/

WALTER MACLYN CONLON
COMMISSIONER