

Unincorp. Bus. Tax
BUREAU OF LAW *Determinations A-Z*

MEMORANDUM

Lekus, Max and Eleanor

TO: State Tax Commission

FROM: Evelyn King, Hearing Officer

SUBJECT: MAX and ELEANOR LEKUS

Petition for a Redetermination of a Deficiency or for a refund of Unincorporated Business Taxes under Article 23 of the Tax Law for the years 1961 and 1962.

A hearing on the above matter was held before me at 80 Centre Street, New York, N. Y., on October 27, 1967. The taxpayer, Max Lekus, appeared and was represented by Stephen A. Wise, Esq. of Messrs. Hyton, Liedergang & Wise.

The issue involved is whether the activities of the taxpayer, Max Lekus, a translator conducting business as sole proprietor under the assumed name "Berlitz Translation Service", constituted the practice of a profession exempt from unincorporated business taxes.

Taxpayer testified that his work consisted of both generalized and specialized translation. During the tax years in question, between 80% and 90% of his work as a translator consisted of translation of study credentials for physicians, engineers, lawyers and nurses; that 90% of his work consisted of translation of legal documents such as charters and by-laws, minutes of stockholders' meetings, changes of names of companies, registrations, and translation of technical documents, more particularly patents, embracing patent specifications in the field of mechanical engineering, electro-technical engineering, chemical engineering and translating documents relating to matters pending before foreign tax courts, characterized by taxpayer, Max Lekus, as work of a legal nature. The clients for whom this work was performed were private companies and attorneys, predominantly patent attorneys; that the balance of taxpayer's work as translator, roughly 10% was performed for publishing houses wishing to publish foreign books who desired to have synopses translated, which work was done by the taxpayer, Max Lekus, for advertising or evaluation purposes and did not require the translation of the book. This work, together with translation of ordinary business documents, contracts, letters and conference reports, constituted the aforesaid 20% balance of the taxpayer's work.

The taxpayer, Max Lekus, holds a Doctorate in Philosophy from Berlin University conferred in 1929. The taxpayer's work at the University was primarily in the field of History, comprising research in State Archives written in German, Latin, French and

Spanish. The taxpayer, at the University, also studied English literature and grammar, phonetics and pronunciation. He read medieval texts in Latin and Romance French, Spanish and Italian. Prior thereto, taxpayer, Max Lukas, received a Certificate of Maturity from the Luisen Gymnasium in Berlin in 1925 which taxpayer testified was the equivalent of completion of two years of college. The taxpayer took post-graduate courses at Columbia University in Political Science where he did research of German documents.

From 1934 to 1941, taxpayer, Max Lukas, was a by-line feature writer for the New York Daily News, and from 1940 to 1951 monitored their shortwave listening post covering the Axis' shortwave broadcasts in German, French and Spanish. Taxpayer, Max Lukas, has taken a two-year course in Russian and has taken Spanish lessons. During World War II, taxpayer, Max Lukas, served in Washington as an editor of the European section of the Foreign Broadcast Language Services, and in this capacity translated, compiled and edited many broadcasts in four languages. He also served in 1945-1946 as a scientific translator of captured German war documents at the United States Naval Research Laboratory in Washington, D. C.

From 1947 to 1950, taxpayer was president-director of Accurate Translators Service, Inc. Taxpayer is a member of the American Translators Association and a founder and past president of the Conference of Translation Agencies of America.

Taxpayer's Exhibit 9, Scientific and Technical Translating, published by UNESCO in 1947, Chapter 2 thereof entitled "Qualitative Aspects of Translating", affirms that the qualitative aspects of specialized translating, referring to scientific and technical translating, requires a competence related to the nature and subject matter of the original text and the purpose of the translation and the type of reader for whom it is intended and can be performed only by someone with the requisite knowledge and practice in technical reasoning to follow technical arguments in the required specialty; that specialized translating involves much more than the mechanical looking up of equivalents; that an extensive knowledge of all aspects of the subject matter to be translated is a requisite.

None of the three experts who testified for the taxpayer, Max Lukas, as to the professional aspects of the work of a translator, were familiar with the day-by-day occupational activities of the taxpayer during the tax years in question other than to know his position as director and operator of Berlitz Language Services and chief translator or to state that they engaged in occasional telephone conversations or personal consultations. One witness, Dr. Schless, did not know the taxpayer. (Hearing transcript pp. 44, 45, 51, 52, 56 and 62)

The testimony of taxpayer's experts, however, is not without importance. Henry Fischbach, a translator and presently president of the American Translators Association, a membership corporation of the State of New York having roughly 2,500 members, including literary and technical translators, testified as to the statements set forth in taxpayer's Exhibit 9 summarized on page 2 hereof were accurate and, in effect, delineated the differentiation between the professional and the amateur in the field of translating; that consultation among professional translators is essential because of the vastness of the subject matter and a common distinction between professional and amateur translators. He further testified that probably the major institution giving courses in translating and interpreting in the United States was Georgetown University School of Languages and Linguistics which led to certificates of proficiency not a degree; that only in the field of linguistics proper, in the United States, the degree of Doctor of Philosophy could be obtained; that courses in translation and interpreting, and linguistics are frequently inseparable.

Alexander Gode, translator and teacher holding full rank of Professor of New York University, teaching languages primarily in German, also courses in translation, and from 1960 to 1963 president of the American Translators Association, also testified that the statements set forth in taxpayer's Exhibit 9, Scientific and Technical Translating, correctly set forth the requirements in training requisite to meet the full standards of a translator; that degrees in translating and in interpreting, not merely certificates, are now being conferred at the University of Geneva and the University of Paris; that the dividing line between the professional and amateur translator is often fluid; that what characterizes the beginner destined to become a real expert is a higher sense of dedication, winding up in the skill, almost a sixth sense, knowing when all sorts of background research are necessary and when to consult the fellow expert. He stressed the need for the exchange of professional knowledge between translators. This witness and Mr. Fischbach both testified to the taxpayer's professional standing as a translator. Mr. Gode stated that Mr. Lukas was "referred to in a vein of the highest respect by all professional translators".

Howard Schless, an Assistant Professor of English Literature at Columbia University, whose work involved translation of medieval texts, testified that the statements set forth in taxpayer's Exhibit 9 are the essentials of accurate and competent translation; that to translate from medieval texts and 17th century history one must not only have the mechanical vocabulary but be able to translate from one culture into another, or even from one time period into another.

In 1950, taxpayer, Max Lekus, became the director of Berlitz Translation Service. A certificate to do business under the assumed name "Berlitz Translation Service" was filed by the taxpayer, Max Lekus, to conduct business at 630 Fifth Avenue and 179 Broadway on August 3, 1954. Capital was not an income producing factor.

By agreement dated December 26, 1951 with the Berlitz School of Languages of America, Inc., taxpayer, Max Lekus, was granted "the right to use the name 'Berlitz' in connection with the business of translating and interpreting languages from or into English or any foreign language" and was provided without charge with necessary office space in their suite at 630 Fifth Avenue, together with incoming telephone service. All monies received from taxpayer's interpreting and translating service were deposited in the bank account of the Berlitz School of Languages of America, Inc., which remitted 75% thereof to taxpayer, Max Lekus, retaining for their own account the balance of 25%. Taxpayer's agreement with Berlitz School of Languages of America, Inc. further provided that taxpayer, Max Lekus, should pay all expenses in connection with his translating and interpreting service, including compensation payable to those assisting him in such work. (Taxpayer's Exhibit 11.)

Taxpayer's Exhibit 14, submitted in taxpayer's Supplemental Affidavit, indicates that taxpayer in or about 1950, sub-licensed another translator to conduct business under taxpayer's trade name, located in the premises of the Berlitz School of Languages of America, Inc. in Lower Manhattan; that said sub-licensee prepared all promotional materials in her own name, rented office space and paid all her own expenses; that all funds received from her translation service were turned over to taxpayer, Max Lekus, doing business as Berlitz Translation Service, and a bookkeeping system keeping separate records of both businesses was devised by Berlitz School of Languages of America, Inc.; that the profits of the sub-licensee's business were divided equally between her and the taxpayer, Max Lekus, after deducting all expenses, including a priority payment to the sub-licensee of \$200 per month.

Said sub-licensee, by the opinion of the New York State Department of Labor filed January 25, 1962, was held to be not subject to taxpayer's supervision, direction or control and not his employee. (Taxpayer's Exhibit 14) Said sub-licensee in my opinion was an independent contractor, working for the taxpayer, Max Lekus, in the conduct of the business conducted in Lower Manhattan.

No testimony was given at the hearing with regard to the existence or substance of this sub-licensing agreement; no evidence

was submitted as to the educational attainments of this sub-licensee or those working for her as outside translators; no evidence was presented as to the nature of the activities of the sub-licensee or those working for her as outside translators during the tax years in question.

The existence of the "Downtown Translation Service" was first referred to by the taxpayer, Max Lokus, in his Supplemental Affidavit, dated October 31, 1967, to explain the difference between the figures contained on taxpayer's Schedule "C" of his United States Income Tax returns for the years 1961 and 1962 and the figures testified to at the hearing as taxpayer's gross income for those years.

Taxpayer, Max Lokus, testified that his gross income for the year 1961 was \$42,522. Schedule "C" of taxpayer's Federal return for 1961, submitted reluctantly in a supplemental affidavit, indicated a gross income of \$75,951.85 and a net profit of \$18,481 which taxpayer listed on his 1961 New York State Tax return as his business income. Taxpayer, Max Lokus, further testified that his gross income for the year 1962 was \$41,133. Schedule "C" of taxpayer's Federal return for 1962 indicated a gross income of \$72,901.72 and a net profit of \$13,469.00, which taxpayer reported on his 1962 New York State Income Tax return as his business income. The supplemental affidavit submitted by taxpayer, Max Lokus, stated that the total for both businesses, the one conducted by the taxpayer at 630 Fifth Avenue and the one conducted by his sub-licensee in Lower Manhattan, were the figures set forth on his Federal Schedule "C"s; that these totals for both businesses diminished by amounts paid out by him for the downtown business yielded the figures testified to, \$42,522 gross income for 1961 and \$41,133 gross income for 1962. No evidence was given establishing that taxpayer filed either a Federal or State partnership return. The royalties required to be paid by the taxpayer, Max Lokus, to the Berlitz School of Languages of America, Inc. on gross income were apparently paid by taxpayer on the gross income of both businesses.

The difference between the gross receipts of the taxpayer reported for Federal Income Tax purposes for the tax years in question and the gross income testified to by the taxpayer arising out of the activities hereinabove discussed for the tax years in question must be considered as having been derived from activities not constituting the practice of a profession.

Said difference must also be considered as not derived from personal services actually rendered by the taxpayer and constitutes considerably more than 20% of the taxpayer's gross income as reported for Federal Income Tax purposes for the tax years in question.

The following facts are submitted solely as background material, but in my opinion are not determinative of the issues involved.

Taxpayer, Max Lehus, testified that about 10% of his 1961 gross income of \$42,522 was paid to outside translators and about 6% of his 1962 gross income of \$41,133 was similarly paid to outside translators. He admitted a mark-up of their bills but could not estimate the percentage of that mark-up, keeping no records of income received from services of independent contractors. The Supplemental Affidavit shows payments to outside translators of approximately 19% of the gross of \$75,921 reported for Federal Income Tax purposes in 1961 and 13% of the gross of \$72,502 reported for Federal Income Taxes in 1962. In addition to the above, there was listed on Federal "C" Schedules as paid for commissions, representing net profits of the proprietor of the Downtown Translation Service, the amount of \$9,830.39 for 1961 and \$8,631.44 for 1962. These amounts allegedly paid as commissions, when added to the amounts paid to outside translators, whether only in the uptown business or only in the downtown business or for both businesses, constitute considerably more than 20% of the gross income of the uptown business as testified to or of the downtown business and considerably more than 20% of the gross income reported for both businesses on Federal Schedule "C" for the tax years in question.

The net amount of income taxpayer, Max Lehus, received from his sub-licensing agreement - \$3,832 in 1961 and \$2,419 in 1962 (Taxpayer's Supplemental Affidavit, p. 4) - the computation of which is unexplained, is in my opinion immaterial.

I am of the opinion, under the evidence presented, that only an unspecified percentage of the 50% of the taxpayer's work conducted at 630 Fifth Avenue characterized by him as work of a legal nature, that portion consisting of translation of technical documents, more particularly patents, embracing patent specifications in the field of mechanical engineering, electro-technical engineering, chemical engineering and documents relating to matters pending before foreign courts, could be considered as work of a professional nature. Taxpayer, however, did not specify what portion of his income was derived from such technical activities or what portion, if any, of these activities was performed by independent contractors employed by him whose professional competency was not, in my opinion, established. Furthermore, taxpayer has failed to establish that he possessed knowledge of an advanced type in the field of law or engineering gained by a prolonged course of specialized instruction and study. In my opinion, even if such advanced knowledge had been established, such knowledge, under the evidence presented in the instant case, though extremely useful, would not, and obviously, not being possessed, was not essential to the production of his income. Under the

evidence presented, basic training in scientific and technical matters, less than knowledge of an advanced type gained by a prolonged course of specialized instruction and study would and did suffice.

I am of the further opinion that the balance of the 50% of the taxpayer's work conducted at 630 Fifth Avenue in which he utilized certain specialized knowledge and skills, characterized by him as work of a legal nature, that portion consisting of translating legal documents such as charters and by-laws, minutes of stockholders' meetings and changes of names of company registrations, should be considered under the evidence presented as work of a specialized nature, not scientific or technical (p. 64 Hearing Minutes) and work not requiring knowledge of an advanced type in a given field of science or learning gained by a prolonged course of specialized instruction and study; that the 25% portion of the taxpayer's work consisting of translation of synopses of foreign books for publishing houses for advertising or evaluation purposes, not requiring the translation of the book and the translation of ordinary business documents, contracts, letters and conference reports should be considered as work having a business purpose or use, not requiring the application of some separately developed learning or science of an advanced type; that the balance of taxpayer's work consisting of translation of study credentials likewise did not require knowledge of an advanced type in a given field of science or learning gained by a prolonged course of study or instruction.

I am further of the opinion that as no evidence was submitted as to the attainments in professional knowledge or the nature of the activities of the taxpayer's sub-licensee, or those working for her as outside translators, that the taxpayer, Max Lohm, has not met the burden of proof establishing that his gross income was derived from the practice of a profession within the intent and meaning of Section 703(e) of the Tax Law. Unincorporated Business Tax Regulations, Article 6; Sundberg v. Brodsky (1936) 7 A.B. 222 15, 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; 36; 37; 38; 39; 40; 41; 42; 43; 44; 45; 46; 47; 48; 49; 50; 51; 52; 53; 54; 55; 56; 57; 58; 59; 60; 61; 62; 63; 64; 65; 66; 67; 68; 69; 70; 71; 72; 73; 74; 75; 76; 77; 78; 79; 80; 81; 82; 83; 84; 85; 86; 87; 88; 89; 90; 91; 92; 93; 94; 95; 96; 97; 98; 99; 100.

See also Tax Law, Section 703 defining unincorporated business gross income as meaning "the sum of the items of income and gain of the business of whatever kind and in whatever form paid, includible in gross income for the taxable year for Federal Income Tax purposes"

I am of the further opinion that the taxpayer, Max Lohm, has not met the burden of proof establishing that more than 80% of the taxpayer's gross income was derived from personal services actually rendered by him or by those supervised and controlled by him; that more than 80% of the taxpayer's gross income was derived from the services of his sub-licensee and independent contractors working in the Downtown business; that said taxpayer is therefore not exempt from Unincorporated Business Taxes within the intent and meaning of

the provisions of Section 703(e) of the Tax Law. Matter of Hewitt
v. Bates, (1948) 897 N. Y. 239.

The question of professional exemption of a translator -
will again be presented for determination in the matter of the ap-
plication of Ernst H. van Hagen, File #2-3514308, action upon which
is being held in abeyance pending determination herein.

For the reasons stated above, I recommend that the deter-
mination of the Tax Commission in the above matter be substantially
in the form submitted herewith.

Frederic K. Meyer
HEARING OFFICER

August 8, 1968

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**STATE OF NEW YORK
SENATE TAX COMMISSION**

**IN THE MATTER OF THE PETITION
OF
MAX AND ELEANOR LEHNE
FOR A RECONSIDERATION OF A DETERMINATION
OR FOR A REVIEW OF DETERMINATIONS
MAKING THEM UNDER ARTICLE 23 OF THE
NEW LAW FOR THE YEARS 1941 AND 1942.**

Max Lehne and Eleanor Lehne, his wife, having filed a petition for a reconsideration of a determination or for a refund of unincorporated business taxes under Article 23 of the New Law for the years 1941 and 1942, and a hearing having been held at the State Tax Commission, 80 Centre Street, New York, New York, on October 27, 1947 before Evelyn King, Hearing Officer of the Department of Taxation and Finance, at which hearing taxpayer, Max Lehne, appeared and testified and was represented by Stephen A. Wink, Esq. of New York, Layton, Hirschberg and Wink, and the matter having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That taxpayer, Max and Eleanor Lehne, filed a New York State income tax resident return for the years 1941 and 1942; that taxpayer, Max and Eleanor Lehne, did not file any unincorporated business tax return for the years 1941 and 1942 on the ground that taxpayer claimed that the activities of the taxpayer constituted the practice of a profession.

(2) That on February 8, 1948, the Department of Taxation and Finance issued a statement of audit charges against the taxpayer, Max and Eleanor Lehne, for the taxable years 1941 and 1942 holding that the business activities of the taxpayer

Hax Lohus, constituted the carrying on of an unincorporated business subject to unincorporated business tax, and, accordingly, issued a notice of deficiency in the sum of \$382.51, including interest.

(1) That the work of the taxpayer, Hax Lohus, consisted of both generalized and specialized translations; that during the tax years in question, between 80% and 85% of the work of the taxpayer, Hax Lohus, conducted at 630 Fifth Avenue, as a translator consisted of translation of study credentials of physicians, engineers, lawyers and nurses; that 35% of his said work conducted at 630 Fifth Avenue consisted of translation of legal documents such as charters and by-laws, minutes of stockholders' meetings, changes of name of company registrations, and translation of technical documents, more particularly patents, embracing patent specifications in the field of mechanical engineering, electro-technical engineering and chemical engineering, and translation of documents relating to matters pending before foreign tax courts, all characterized by taxpayer, Hax Lohus, as work of a legal nature; that the clients for whom this work was performed were private companies and attorneys, predominantly patent attorneys; that the balance of taxpayer's work as translator conducted at 630 Fifth Avenue, roughly 15%, was performed for publishing houses wishing to publish foreign books who desired to have synopses translated, which work was done by the taxpayer, Hax Lohus, for advertising or evaluation purposes and did not require the translation of the book; that this work, together with translation of ordinary business documents, contracts, letters and conference reports constituted the aforesaid 15% balance of taxpayer, Hax Lohus' work.

(2) That taxpayer, Hax Lohus, holds a Doctorate of Philosophy from Berlin University conferred in 1929; that

his work at the University was primarily in the field of History comprising research in State Archives written in German, Latin, French and Spanish; that taxpayer, Max Lohm, also studied at the University, English literature and grammar, phonetics and pronunciation; that taxpayer, Max Lohm, read National texts in Latin and Romance French, Spanish and Italian; that prior thereto, taxpayer, Max Lohm, received a Certificate of Maturity from the Luisen Gymnasium in Berlin in 1935, equivalent to the completion of two years of college; that taxpayer, Max Lohm, did research of German documents while taking post-graduate courses at Columbia University in Political Science; that from 1940 to 1941, taxpayer, Max Lohm, monitored the short wave listening post of the New York Daily News covering Axis shortwave broadcasts in German, French and Spanish; that taxpayer, Max Lohm, has taken a two-year course in Russian and has taken Spanish lessons; that during World War II, taxpayer, Max Lohm, served in Washington as an editor of the European Section of the Foreign Broadcast Language Service, and in this capacity, translated, compiled and edited broadcasts in four languages; that taxpayer, Max Lohm, also served in 1943 and 1945 as a scientific translator of captured German war documents at the United States Naval Research Laboratory in Washington, D. C.; that from 1947 to 1950, taxpayer, Max Lohm, was president-director of Accurate Translators Service, Inc.; that taxpayer, Max Lohm, is a member of the American Translators Association and a founder and past president of the Conference of Translation Agencies of America.

(5) That the degree of Doctor of Philosophy can be obtained in the United States only in the field of linguistics proper; that degrees in translating and in interpreting are now being conferred at the University of Geneva and the University of Paris;

that it was testified that the qualitative aspects of specialized translating, referring to scientific and technical translating, require as set forth in taxpayer's Exhibit 9, a competence related to the nature and subject matter of the original text and the purpose of the translation and the type of reader for whom it is intended and can be performed only by someone with the requisite knowledge and practice in technical reasoning to follow technical arguments in the required specialty; that specialized translating involves much more than the mechanical looking up of equivalents; that an extensive knowledge of all aspects of the subject matter to be translated is a requisite; that the statements set forth in taxpayer's Exhibit 9, scientific and technical translating, delineated the difference between the professional and amateur in the field of translating and correctly set forth the requirements in training requisite to meet the full standards of a translator and were the essentials of accurate and competent translation.

(6) That in 1930, taxpayer, Max Lotus, became the director of Berlitz Translation Service and continued as such during the tax years in question; that a certificate to do business under the assumed name "Berlitz Translation Service" was filed by taxpayer, Max Lotus, on August 3, 1931 to conduct business as sole proprietor at 630 Fifth Avenue and 179 Broadway; that capital was not an income producing factor.

(7) That by agreement dated December 26, 1931 with the Berlitz School of Languages of America, Inc., taxpayer, Max Lotus, was granted "the right to use the name 'Berlitz' in connection with the business of translating and interpreting languages from or into English or any foreign language" and was provided, without charge, with the necessary office space in their

suite at 630 Fifth Avenue, together with incoming telephone surpluses that all monies received from taxpayer's interpreting and translating service were deposited in the bank account of the Berlitz School of Languages of America, Inc., which remitted 75% thereof to taxpayer, Max Lohm, retaining for their own account the balance of 25%; that taxpayer, Max Lohm's agreement with Berlitz School of Languages of America, Inc. further provided that taxpayer, Max Lohm, should pay all expenses in connection with his translating and interpreting service, including compensation payable to those assisting him in such work.

(5) That a decision by the appeals section of the unemployment insurance, reference section of the New York State Department of Labor rendered January 23, 1962, submitted in taxpayer's supplemental affidavit, found therein under findings of fact that in or about 1950 the taxpayer, Max Lohm, sub-licensed another translator to conduct business under taxpayer's trade name, located in the premises of the Berlitz School of Languages of America, Inc. in Lower Manhattan; and that said sub-licensee prepared all promotional materials in her own name, rented office space and paid all of her own expenses; and that all funds received from her translation service were turned over to the taxpayer, Max Lohm, doing business as Berlitz Translation Service and a bookkeeping system keeping separate records of both businesses was devised by Berlitz School of Languages of America, Inc.; and that the profits of the sub-licensee's business were divided equally between her and the taxpayer, Max Lohm, after deduction of all expenses, including a priority payment to the sub-licensee of \$200 per month; and that said sub-licensee by opinion rendered therein was held not

to be subject to the supervision, direction or control of the taxpayer, Max Lohs, and not his employee; that said sub-licensor was not an employee of the taxpayer.

(9) That no testimony was given at the hearing with regard to the existence or substance of this sub-licensing agreement, and no evidence presented as to the educational attainments of the sub-licensor or as to the nature of her activities during the tax years in question; nor was any such evidence presented as to the independent contractors working for her as outside translators.

(10) That taxpayer, Max Lohs, testified that his gross income for the year 1961 was \$42,922. Schedule "C" of taxpayer's Federal return for 1961, submitted in his supplemental affidavit, indicated a gross income of \$73,951.85 and a net profit of \$14,461 which taxpayer listed on his 1961 New York State tax return as his business income; that taxpayer, Max Lohs, further testified that his gross income for the year 1962 was \$41,133. Schedule "C" of taxpayer's Federal return for 1962 indicated a gross income of \$72,961.79 and a net profit of \$13,469, which taxpayer reported on his 1962 New York State income tax return as his business income; that the supplemental affidavit submitted by taxpayer, Max Lohs, stated that the total for both businesses, the one conducted by the taxpayer at 630 Fifth Avenue and the one conducted by his sub-licensor in Lower Manhattan, were the figures set forth on his Federal Schedule "C's"; that these totals for both businesses diminished by amounts paid out by him for the downtown business, yielded the figures testified to, \$42,922 gross income for 1961 and \$41,133 gross income for 1962; that taxpayer failed to establish that he filed either a Federal or state partnership return.

(11) That no evidence was presented by the taxpayer, Max Lohm, as to what percentage of the 90% of taxpayer's work conducted at 630 Fifth Avenue, characterized by him as work of a legal nature, consisted of translation of technical documents, more particularly, patents, embracing patent specifications in the field of mechanical engineering, electro-technical engineering, chemical engineering, and documents relating to matters pending before foreign tax courts, nor what percentage of such work, if any, was performed by independent contractors employed by him, whose possession of knowledge of an advanced type in a given field of science or learning gained by a prolonged course of instruction or study was not established.

(12) That taxpayer has failed to establish that he was in possession of knowledge of an advanced type in the field of law or engineering gained by a prolonged course of specialized instruction and study.

(13) That the taxpayer, Max Lohm, has failed to establish that his activities in which he utilized certain knowledge and skills required knowledge of an advanced type in a given field of science or learning gained by a prolonged course of specialized instruction or study.

(14) That the taxpayer, Max Lohm, has failed to establish that the gross income from the business conducted by the taxpayer at 630 Fifth Avenue and the gross income from the business conducted by his sub-lessee under his trade name in Lower Manhattan, totals of which were reported by him as his gross income for Federal Tax purposes for the tax years in question, were derived from activities which would constitute the practice of a recognized profession within the intent and meaning of section 703(c) of the Tax Law.

(15) That the taxpayer has not met the burden of proof that more than 80% of the taxpayer's gross income as defined in section 703 of the Tax Law was derived from personal services actually rendered by him or by those supervised and controlled by him; that more than 20% of the taxpayer's gross income was derived from the activities of his sub-licensees or his independent contractors.

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

The State Tax Commission hereby

HOLDING:

(A) That the income of the taxpayer, Max Kahn, for the years in issue was derived from activities which did not constitute the practice of a profession.

(B) That the more than 20% of the taxpayer's gross income was derived from personal services not actually rendered by him or by those supervised and controlled by him.

(C) That taxpayer, Max Kahn's income for the years in issue was derived from a business carried on by him solely within the State of New York and is subject to unincorporated business tax within the intent and meaning of section 703(a) of the Tax Law.

(D) That, accordingly, the notice of deficiency for the years 1951 and 1952 was properly issued and that the tax and interest stated therein are correct and are due and owing, together with any other lawful interest and statutory charges; that the taxpayer's petition for a redetermination of a deficiency or for a refund of unincorporated business taxes under Article 23 of the Tax

Law for the years 1961 and 1962 be and the same hereby is enacted.

Enacted: Albany, New York, on this 21st day of August, 1960.

JOSEPH H. MURPHY

/s/

JOSEPH H. MURPHY

/s/

A. BRUCE MANLEY

JOSEPH H. MURPHY