

(8-63)
BUREAU OF LAW

MEMORANDUM

*Unincorp. Bus. Tax
Determinations A-Z
Limpert, Alexander S.
& Robin J.
1968*

TO: State Tax Commission

FROM: Vincent P. Molineaux, Hearing Officer

SUBJECT: Alexander S. Limpert and
Robin J. Limpert
Application for Revision
or Refund of Unincorporated
Business Taxes Under Article
18-A of the Tax Law for the
Years 1959 and 1960

A hearing on the above matter was held before me at 80 Centre Street, New York, New York on May 27, 1965.

The question at issue is whether applicants are subject to unincorporated business taxes in their partnership enterprise or whether they are exempt as practicing a profession within the meaning of Section 386 of the Tax Law.

Taxpayers filed partnership returns for the years 1959 and 1960 describing their business as "Prof. Laboratory Engineers & Inventors" and "Laboratory Testing & Inventors.". No unincorporated business taxes were paid and Assessments AB-010424 and AB-010425 were issued June 1, 1962 on the ground that the activities reported constituted a carrying on of an unincorporated business.

Alexander Limpert, 68 years of age at the time of the hearing, has been engaged in laboratory work and inventing with his father since before 1918. Both he and his father were self-educated, holding no academic degrees. Neither he nor his father held any license or certificate by any public authority or school.

Prior to the father's decease, a brother, Robin Limpert, joined the firm in 1924 upon graduation from Pratt Institute in Brooklyn, where he received a certificate of graduation in Industrial Chemical Engineering. He is not registered or licensed by any public authority or educational institution.

Taxpayers' endeavors consist of developing, designing and patenting pumps and other mechanical devices. They then receive royalties from the users of the devices and consultation fees for their assistance to the licensees in setting up the operations.

For the year 1959 gross income of \$22,800 consisted of patent leasing \$20,000 and consultant fees of \$2,800. For 1960 patent leasing accounted for \$15,000 and consultant fees \$4,400.

It is claimed on behalf of the taxpayers that under the decision in Teague v. Graves (1941), 281 App. Div. 652, aff'd, 287 N.Y. 549, the partners are engaged in the profession of industrial design. However, Teague was engaged in designing for others from whom he received compensation. The present taxpayers do their designing operations for themselves for the purpose of obtaining patents and naturally they do not pay themselves a fee for designing and none of their income is from this source. The term profession implies a special relationship with clients for whom the special training and knowledge of the practitioner is used on behalf of such clients. No such relationship exists in the licensing of patents which may be bought, sold or leased like any other commodity.

With respect to the consulting fees, these would appear to be in the nature of fees paid to engineering consultants. However, since professional engineers are required to be licensed in the State of New York (Education Law, Section 211), taxpayers are in the position of either practicing engineering without a license or not being consulting engineers. Either way they are not qualified for professional exemption.

In view of the foregoing, I recommend that the determination of the State Tax Commission denying the application for revision be substantially in the form submitted herewith.

/s/

V. P. MOLINEAUX
Hearing Officer

VPM:io/dc
Enc.

December 9, 1968

12-12-68

STATE OF NEW YORK

STATE TAX COMMISSION

IN THE MATTER OF THE APPLICATION

OF

ALEXANDER S. LIMPert AND ROBIN J. LIMPert

**FOR REVISION OR REFUND OF UNINCORPORATED BUSI-
NESS TAXES UNDER ARTICLE 16-A OF THE TAX LAW
FOR THE YEARS 1959 AND 1960**

The taxpayers having filed an application for revision or refund of unincorporated business taxes under Article 16-A of the Tax Law for the years 1959 and 1960, and a hearing having been held at the office of the State Tax Commission, 80 Centre Street, New York, New York on May 27, 1961 before Vincent P. Molineaux, Hearing Officer of the Department of Taxation and Finance, and the record having been duly examined and considered.

The State Tax Commission hereby finds:

(1) That the taxpayers filed partnership returns for the years 1959 and 1960 describing their business as "Prof. Laboratory Engineers & Inventors" and "Laboratory Testing & Inventors."

(2) That no unincorporated business taxes were paid for the years 1959 and 1960, and Assessments AB-010424 and AB-010425 were issued June 1, 1962 on the ground that the activities reported constitute the carrying on of an unincorporated business.

(3) That Alexander Limpert has been engaged in laboratory work and engineering for upwards of 45 years, and that he is self-educated, holding no academic degrees nor does he hold any license or certificate by any public authority or school.

(4) That the other partner, Robin J. Limpert, is a graduate of Pratt Institute in Brooklyn, where he received a certificate of graduation in Industrial Chemical Engineering. He holds no degree, and he is not registered by any public licensing authority or public institution.

(5) That taxpayers' endeavors consist in developing, designing and patenting pumps and other mechanical devices, and they receive royalties from the users of patents and consultation fees for their assistance to the licensees in setting up the operations.

(6) That for the year 1959 gross income of \$22,000 consisted of patent leasing, \$20,000, and consultant fees, \$2,000. For 1960 patent leasing accounted for \$15,000 and consultant fees, \$4,400.

(7) That while taxpayers may be especially well qualified in the field of science and their operations call for a high degree of skill in design, they are not engaged in designing as the practice of a profession, but for themselves, and that the principal source of their income is from patent license royalties.

(8) That the income for consultation, if on a professional basis, would be subject to license by the State of New York, and the partners are not so licensed.

Based on the foregoing findings, the State Tax Commission hereby

DETERMINES:

(A) That the activities of the taxpayers do not constitute the practice of a profession but the conduct of an unincorporated business subject to tax under Article 14-A of the Tax Law.

(B) That Assessments AB-810424 for the year 1959 and AB-810425 for the year 1960 are correct and are hereby affirmed, together with any additional interest and other amounts which may be lawfully due and owing thereon.

(C) That the taxpayers' application for revision be, and the same is hereby denied.

Dated: Albany, New York, this 16th day of December, 1960.

STATE TAX COMMISSION

/s/

JOSEPH H. MURPHY

President

/s/

A. BRUCE MANLEY

Commissioner

Commissioner