L 9 (3-68)

Unincorp. Bus. Tax Determinations A-Z
Matern, Rudolph A. et al

BUREAU OF LAW

MEMORANDUM

TO: State Tax Commission

FROM: Francis V. Dow, Hearing Officer

SUBJECT: Applications of Rudolph A. Matern for Revision or Refund of Unincorporated Business Taxes under Article 16-A of the Tax Law for the Years 1949 and 1950

Applications of R. A. Matern Associates for Revision or Refund of Unincorporated Business Taxes under Article 16-A of the Tax Law for the Years 1951, 1952 and 1953

Applications of Herman H. York for Revision or Refund of Personal Income Taxes under Article 16 of the Tax Law for the Years 1951, 1952 and 1953 and Unincorporated Business Taxes under Article 16-A of the Tax Law for the Years 1950, 1951, 1952 and 1953

Petition of Herman H. York and Loretta H. York for a Redetermination of a Deficiency or for Refund of Personal Income Taxes under Article 22 of the Tax Law and Unincorporated Business Taxes under Article 23 of the Tax Law for the Years 1960 and 1961

see Income Tax Determinations A-Z
York, Herman H. (5/28/68)

Hearings with reference to the above matters were held before me at 80 Centre Street, New York, New York on February 8, 1967. Subsequently, a memorandum and proposed determinations were prepared and submitted to the Commission sustaining the assessments and deficiencies. Commissioner Conlon returned the file and expressed uncertainty with the rationale and the conclusions expressed in my memorandum. A further hearing was held on January 23, 1968 in order to obtain more information regarding the taxpayers' activities. Since common questions are involved by consent of the taxpayers' representative, the minutes and exhibits in each of the hearings were incorporated and made a part of the other. The appearances and the evidence produced were as shown in the stenographic minutes and exhibits submitted herewith.

Assessments were issued on February 6, 1958 with relation to Rudolph A. Matern, an architect, on the basis that his income from the sale of predesigned one-family resident building plans commonly known as "stock plans" was subject to unincorporated business taxes as follows:

Year	Assessment No.	Unincorporated Business Tax	Penalty and Interest	Total
1949	FA 73530	$211.47	$109.96	$ 321.43
1950	FA 73731	714.04	328.46	1042.50
			TOTAL	$1363.93

Assessments were issued with relation to R.A. Matern Associates on February 6, 1958 on the basis that income from the sale of "stock plans" was subject to unincorporated business taxes and the disallowance of travel, auto and Christmas expenses as unsubstantiated as follows:

Year	Assessment No.	Unincorporated Business Tax	Penalty and Interest	Total
1951	FA 73523	$ 860.51	$344.20	$1204.71
1952	FA 73524	1100.84	374.29	1475.13
1953	FA 73525	1330.10	372.43	1702.53
			TOTAL	$4382.37

The taxpayer did not contest the disallowance of the travel, auto and Christmas expenses and no evidence was submitted with regard to them.

Assessments were issued on February 6, 1958 with relation to Herman H. York on the basis that his income on the sale of "stock plans" was subject to unincorporated business taxes, and for the years 1951, 1952 and 1953, travel and entertainment expenses were disallowed as unsubstantiated and the increase of the taxpayer's share of income from Matern Associates as a result of a partnership audit.

Year	Assessment No.	Normal Tax	Unincorporated Business Tax	Penalty and Interest	Total
1950	FA 73526		$251.03	$115.47	$ 366.50
1951	FA 73527	$126.72	298.45	119.38	544.55
1952	FA 73528	102.85	246.11	83.68	432.64
1953	FA 73529	65.05	216.40	60.59	342.04
				TOTAL	$1795.73

The taxpayer contested only the assessment of unincorporated business tax on the income from the sale of the "stock plans".

A statement of audit change and notice of deficiency were issued for the years 1960 and 1961 on October 4, 1964 with relation to Herman H. York and Loretta H. York (File No. 6296878) determining that

they were subject to a tax liability for personal income and unincorporated business taxes on the basis that entertainment, travel, Christmas expenses and gifts and association expenses were disallowed as personal expenses and unsubstantiated and income from the sale of "stock plans" was received from nonprofessional sources and was subject to unincorporated business tax as follows:

Year	Income Tax	Unincorporated Business Tax	Penalty	Interest	Total
1960	$ 72.00	$418.48	$104.62	$103.00	$ [illegible]
1961	120.00	553.25	138.31	97.91	[illegible]
				TOTAL	[illegible]

The taxpayers did not contest the disallowance of the entertainment, travel, Christmas expenses and gifts and association expenses.

The taxpayers, Rudolph A. Matern and Herman H. York, are licensed architects. They, as partners under the name of Matern and York, R. A. Matern Associates and individually, were engaged in the sale of predesigned one-family resident building plans. The plans were prepared by the taxpayers. The taxpayers claimed that the sale of these "stock plans" constitute one of the activities of the practice of the profession of architecture, and that the income from such sale is exempt from the unincorporated business tax.

The building plans were publicized in newspapers and various types of publications. They were ordered by referring to stock plan numbers or by descriptions of the houses. The plans were ordered by mail or by personally appearing at the taxpayer's office. The stock building plans were sold to the public at large. There was no contact or relationship with a particular individual. No personal advice was given on a specific building problem. There was no employment of the taxpayer, expressed or implied resulting either from contract, designation or assignment. The plans sold for $35 to $45.

Orders for the plans were obtained as a result of publicity received in newspapers and magazines. Although it was claimed that the taxpayers did no advertising and could do none, substantial deductions were claimed for payments to publishers, publication publicity, commissions to publishers and advertising. The taxpayer could not remember what these expenditures were for. The taxpayer's seals as architects were affixed to the plans which they sold, claiming that such a seal was required to be affixed to them, but they could not explain in what manner a professional responsibility resulted from that fact. Similar plans are sold by persons other than architects.

In my opinion, the income of the taxpayers derived from the sale of "stock plans" constitutes the carrying on of an unincorporated business and not the practice of a profession. While the designing of building plans is included in the practice of architecture, it does not follow that the sale of such plans is always the practice of architecture. The activities of the taxpayers are analogous to those of pharmacists who operate drugstores. Charges for professional services in compounding prescriptions as distinguished from the sale of merchandise including drugs and patent medicines are exempt from the unincorporated business tax (20 N.Y.C.R.R. 361.1, subdivision (f)). Similarly, the Court of Appeals held in New York County Lawyers Association v. Bennett, 21 N Y 2d 694, reversing 27 A D 2d 161 on the dissenting opinion of Justice Stevens that the sale of the book How To Avoid Probate, a do-it-yourself kit containing will and trust forms, did not constitute the practice of law.

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

/s/ FRANCIS V. DOW
Hearing Officer

FVD:rlp
Enc.
April 11, 1968

STATE OF NEW YORK

STATE TAX COMMISSION

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IN THE MATTER OF THE APPLICATION

OF

[illegible] A. [illegible]

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

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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 1959 and 1960 and hearings having been held in connection therewith at the office of the State Tax Commission at 80 Centre Street, New York, New York on February 6, 1967 and February 6, 1968 before Francis V. Lee, Hearing Officer of the Department of Taxation and Finance, at which hearings the taxpayer was represented, and the record having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That the taxpayer filed resident income tax returns for the years 1959 and 1960; that the taxpayer did not file unincorporated business tax returns for the years 1959 and 1960.

(2) That an assessment was issued for the year 1959 (Assessment No. NYA 73330) on February 6, 1968 assessing unincorporated business tax, penalty and interest due in the amount of $[illegible] on the basis that no unincorporated business tax return was filed and that the taxpayer's income from the sale of prefabricated one family resident building plans was subject to the unincorporated business tax.

(3) That an assessment was issued for the year 1960 (Assessment No. NYA 73331) on February 6, 1968 assessing unincorporated business tax, penalty and interest due in the amount of

$1,842.50 on the basis that no unincorporated business tax return was filed and that the taxpayer's income from the sale of predesigned one family resident building plans was subject to the unincorporated business tax.

(4) That the taxpayer is a licensed architect; that he prepared plans and specifications for one-family residences, copies of which he furnished to persons who ordered them by a number assigned to the plans or by a description of the houses; that the taxpayer did no custom designing of houses; that no services were provided the persons who ordered the plans and specifications; that the plans were ordered by mail or by appearing personally at the taxpayer's office; that charges were made for the plans which ranged from $35.00 to $45.00 for four sets; that ordinarily the taxpayer had no personal contact with the purchasers of the plans.

(5) That the orders for the stock plans were obtained as a result of publicity received in newspapers and magazines; that the taxpayer alleged that he did no advertising and as a licensed architect was prohibited from doing so in connection with the practice of his profession; that the orders for the stock plans were obtained as a result of publicity received in newspapers and magazines; that the taxpayer listed expenses for publicity in the amount of $55.00 in 1949 and payments to publishers of $69,571.75 in 1950.

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

DETERMINES:

(A) That the sale of plans and specifications as set forth in finding (4) constitutes the carrying on of an unincorporated business, the income of which is subject to the unincorporated business tax, since such activities do not constitute the practice of a

profession within the intent and meaning of Section 386 of the Tax Law.

(3) That the assessments for additional taxes for the years 1949 and 1950 (Assessment Nos. BFA 73538 and BFA 78531) are correct and lawfully due and owing together with interest and other charges and do not include any other taxes or charges which are not lawfully due and owing; that the taxpayer's applications with respect to the years 1949 and 1950 be and the same are hereby denied.

DATED: Albany, New York on this 28th day of May, 1968.

STATE TAX COMMISSION

/s/ JOSEPH H. MURPHY
PRESIDENT

/s/ A. BRUCE MANLEY
COMMISSIONER

/s/ SAMUEL E. LEPLER
COMMISSIONER

STATE OF NEW YORK

STATE TAX COMMISSION

IN THE MATTER OF THE APPLICATIONS

OF

R. A. [illegible], ADDICKS

FOR REVISION OR REFUND OF UNINCORPORATED BUSINESS TAXES UNDER ARTICLE 16-A OF THE TAX LAW FOR THE YEARS 1951, 1952 AND 1953

The taxpayer herein filed applications for revision or refund of personal income taxes under Article 16-A of the Tax Law for the years 1951, 1952 and 1953, and hearings having been held in connection therewith at the office of the State Tax Commission at 80 Centre Street, New York, New York on February 8, 1967 and on February 6, 1968 before Francis V. Dee, Hearing Officer of the Department of Taxation and Finance, at which hearing the taxpayer was represented and the record having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That the taxpayer filed unincorporated business tax returns for the years 1951, 1952 and 1953; that the taxpayer contended that his unincorporated business taxes due under any return made for, made by or on behalf of the taxpayer for the taxable years ended December 31, 1951, December 31, 1952 and December 31, 1953, under the Tax Law may be determined and assessed at any time on or before April 15, 1968.

(2) That an assessment was issued for the year 1951 (Assessment No. [illegible]) on February 6, 1958 assessing unincorporated business tax, penalty and interest due in the amount of $1,[illegible].71 on the basis that travel, automobile and furniture expenses were disallowed as unsubstantiated and that the reported income of the taxpayer from the sale of house plans is subject to the unincorporated business tax.

(3) An assessment was issued for the year 1952 (Assessment No. FA 73524) on February 6, 1958 assessing unincorporated business tax, penalty and interest due in the amount of $1,475.13 on the basis that travel, entertainment and Christmas expenses were disallowed as unsubstantiated and that the reported income of the taxpayer from the sale of house plans is subject to the unincorporated business tax.

(4) That an assessment was issued for the year 1953 (Assessment No. BFA 73525) on February 6, 1958 assessing unincorporated business tax, penalty and interest due in the amount of $1,782.53 on the basis that travel, entertainment and Christmas expenses were disallowed as unsubstantiated and that the reported income of the taxpayer from the sale of house plans is subject to the unincorporated business tax.

(5) That the taxpayer did not contest the disallowance of entertainment, travel and automobile and Christmas expenses and submitted no evidence to substantiate them.

(6) That the taxpayer is a partnership whose members, R. Mattern and H. H. York, are licensed architects; that they prepared plans and specifications for one family residents, copies of which they furnish to persons who ordered them by a number assigned to the plans or by a description of the houses; that the taxpayer did no custom designing of houses; that no services were provided the persons who ordered the plans and specifications; that the plans were ordered by mail or by appearing personally at the taxpayer's office; that charges were made for the plans which ranged from $35.00 to $45.00 for four sets; that ordinarily the taxpayer had no personal contact with purchasers of the plans.

(7) That the orders for the stock plans were obtained as a result of publicity received in newspapers and magazines; that the taxpayer alleged that it did no advertising and that the partners, as licensed architects, were prohibited from doing so in connection with the practice of their profession; that the taxpayer listed expenses in earning their income in the amount of $17,859.16 for payments to publishers during the year 1951; that they included expenses of $5,291.52 for publicity in advertising, $8,000.00 for publisher's publicity, and $5,493.28 for commissions to publishers for the year 1952; that in 1953, they claimed expenses of $3,283.43 for publicity and advertising.

(8) That the taxpayer affixed the seals of the partners as architects to the plans which they sold, claiming that they became responsible for malpractice; that the taxpayer was unable to explain in what manner it was subject to liability in connection with the sale of such stock plans.

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

DETERMINES:

(A) That the sale of stock plans and specifications as set forth in finding (5) constitutes the carrying on of an unincorporated business, the income of which is subject to the unincorporated business tax since such activities do not constitute the practice of a profession within the intent and meaning of Section 385 of the Tax Law.

(B) That the assessments for additional taxes for the years 1951, 1952 and 1953 (Assessment Nos. FA 73523, FA 73524 and BFA 73525, respectively) are correct and lawfully due and owing

together with interest and other charges and do not include any other taxes and charges which are not lawfully due and owing; that the taxpayer's application for the years 1951, 1952 and 1953 be and the same are hereby denied.

DATED: Albany, New York on this 28th day of May, 1968.

STATE TAX COMMISSION

/s/ JOSEPH H. MURPHY
PRESIDENT

/s/ A. BRUCE MANLEY
COMMISSIONER

/s/ SAMUEL E. LEPLER
COMMISSIONER