

## BUREAU OF LAW

## MEMORANDUM

*Unincorp. Bus. Tax Determin.*  
*A-Z*  
*RST Associates*

TO: The State Tax Commission

FROM: Vincent P. Molineaux, Hearing Officer

SUBJECT: ALBERT D. RICKMERS, WILLIAM S. SHOEMAKER,  
HOLLIS N. TODD d/b/a RST ASSOCIATES

Petition for Redetermination of Deficiency  
of Unincorporated Business Tax under  
Article 23 of the Tax Law for the Year 1963

A hearing on the above matter was held before me at the Rochester District Office December 5, 1967.

The issue raised is whether income received by the taxpayers is subject to unincorporated business tax under Article 23 of the Tax Law or is excluded from the application of the tax by section 703(c) of the Tax Law which excludes from the definition of an unincorporated business "any other profession in which capital is not a material income producing factor and in which more than eighty per centum of the unincorporated business gross income for the taxable year is derived from personal services actually rendered by the \* \* \* members of the partnership".

RST Associates, a partnership of three members, filed a resident partnership return for the year 1963 showing total income of \$13,217 on which no unincorporated business tax was computed.

Statement of audit changes, and notice, File #3668, was issued by the Income Tax Bureau September 18, 1965 on the ground that the profits distributed to the partners were subject to unincorporated business tax. A petition for redetermination was filed September 24, 1965 claiming exemption from unincorporated business tax on the ground that the partners were practicing a profession within the meaning of section 703(c) of the Tax Law.

The partners are all members of the faculty of Rochester Institute of Technology. The mailing address of the firm is at the home of Rickmers, one of the partners. The business is stated to be one of consultation and advice in the field of "photographic engineering". The members edit technical publications and advise and participate in the design of photographic apparatus for clients. The members claim to be photographic engineers.

Rochester Institute of Technology, in which the partners each hold the grade of professor, consists of eleven teaching colleges emphasizing technical and engineering education. The institute offers degrees of Bachelor of Science, Master of Science, Bachelor of Fine Arts and Master of Fine Arts under recognition by the New York State Education Department. The B.S. and M.S. degrees are conferred on photographic science majors of which approximately 306 have been granted since 1955.

Of the partners, Mr. Todd is staff chairman of the Department of Photographic Science and Instrumentation in the School of Photographic Arts and Sciences of the College of Photographic Arts and Photography. He holds a B.A. in chemistry and an M.A. in education from Cornell University. He teaches courses in physics of the photographic process. He is a member of various scientific societies and has credit for two books and eight published scientific articles.

Mr. William S. Shoemaker, another partner, holds B.S. and M.S. degrees and is the Director of the School of Photographic Arts and Sciences of RIT.

Mr. Albert D. Rickmers, the third partner, is a full professor in the School of Photographic Science at RIT. He holds a bachelors degree in mathematics, a masters degree in education and is presently enrolled for a masters degree in industrial statistics. With Professor Todd he has a college textbook now on the market called "Statistics, An Introduction". He is a member of the American Society of Quality Control.

Mr. Rickmers testified in part that the firm is "concerned in our research work and in our consulting work here with the field of photographic science and we are not producers of photography but of photographic systems in allied areas." He testified that his work with the firm is almost entirely concerned with the use of statistics (pp. 32 and 33).

It was testified that the firm is employed by many organizations in the photographic line including the following firms together with the type of work performed:

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|---------------------------|------------------------------------|
| 1. Fairchild-Hiller:      | Editing technical manuals          |
| 2. NBC News:              | Developing and presenting lectures |
| 3. Aeroflex Laboratories: | Retainer arrangement               |
| 4. American Optical Co.:  | Evaluating an optical device       |

- |                     |   |
|---------------------|---|
| 5. Bausch and Lomb: | Seminar on statistics                             |
| 6. Time Magazine:   | Evaluating a photographic method of though images |

It was also recited that activities of the partners include: (1) One will appear in the next edition of "American Men of Science". (2) One will appear in a forthcoming edition of "Who's Who in America". (3) One is about to assume the position of technical editor of SPSE News which is the organ of the society of photographic sciences and engineers. (4) One is a member of the Editorial Board of Abstracts of Photographic Science and Engineering Literature. (5) One is certified as quality engineer by the American Society for Quality Control. (6) One has participated in several two-week seminars for photographic science and engineering. (7) One has participated in the ninety-eighth technical conference of the motion picture and television engineers in Montreal.

Based upon the foregoing it is my opinion that while all of the partners are well educated the State of New York has not recognized any discipline known as photographic science or photographic engineering. While the practitioners in this case may be well versed in various disciplines their function as a firm appears to be that of business consultants which is not exempt as a profession under section 703(c) of the Tax Law.

I therefore recommend that the determination of the State Tax Commission in denying the petition and confirming the statement of audit changes be substantially in the form submitted herewith.

/s/

VINCENT P. MOLINEAUX  
Hearing Officer

April 15, 1968  
VPM:inn

Enc.

4-25-68

**STATE OF NEW YORK**

**STATE TAX COMMISSION**

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**IN THE MATTER OF THE PETITION**

**OF**

**ALBERT D. RICKMERS,  
WILLIAM S. SHOEMAKER,  
MOLLIS N. TODD d/b/s  
RST ASSOCIATES**

**FOR REDETERMINATION OF DEFICIENCY  
ON UNINCORPORATED BUSINESS TAX  
UNDER ARTICLE 23 OF THE TAX LAW  
FOR THE YEAR 1963**

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The taxpayers, Albert D. Rickmers, William S. Shoemaker, and Mollis N. Todd, having filed a petition for redetermination of a deficiency of unincorporated business tax for the year 1963 (File No. 3668) and a hearing having been held at the office of the State Tax Commission, 115 Main Street East, Rochester, New York 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 partners are all members of the faculty of Rochester Institute of Technology, the mailing address of the firm is at the home of Rickmers, one of the partners; the business is consultation and advice in the field of "photographic engineering"; the members edit technical publications and advice and participate in the design of photographic apparatus for clients and the members claim to be photographic engineers.

(2) That the Rochester Institute of Technology in which the partners each hold the grade of professor, consists of eleven

teaching colleges emphasizing technical and engineering education; that the Institute offers degrees of Bachelor of Science, Master of Science, Bachelor of Fine Arts and Master of Fine Arts under recognition by the New York State Education Department; the B.S. and M.S. degrees are conferred on photographic science majors of which approximately 305 have been granted since 1935.

(3) That of the partners, Mr. Todd is staff chairman of the Department of Photographic Science and Instrumentation in the School of Photographic Arts and Sciences of the College of Photographic Arts and Photography; he holds a B.A. in chemistry and an M.A. in education from Cornell University; he teaches courses in physics of the photographic process; he is a member of various scientific societies and has credit for two books and eight published scientific articles.

(4) That Mr. William E. Shoemaker, another partner, holds B.S. and M.S. degrees and is the Director of the School of Photographic Arts and Sciences of RIT.

(5) That Mr. Albert D. Rickmers, the third partner, is a full professor in the School of Photographic Science at RIT. He holds a bachelors degree in mathematics, a masters degree in education and is presently enrolled for a masters degree in industrial statistics; with Professor Todd he has a college textbook now on the market called "Statistics, An Introduction"; and he is a member of the American Society of Quality Control.

(6) That the firm is concerned in research work and in consulting work in the field of photographic and related sciences. They are not producers of photography and the work of the firm is largely concerned with the use of statistics.

(7) That the firm is employed by many organizations including the following:

(a) Fairchild-Hiller:	Editing technical manuals
(b) NBC News:	Developing and presenting lectures
(c) AeroFlex Laboratories:	Retainer arrangement
(d) American Optical Co.:	Evaluating an optical device
(e) Dausch and Lomb:	Seminar on statistics
(f) Time Magazine:	Evaluating a photographic method of thought images

(8) That activities of the partners include: (1) One will appear in the next edition "American Men of Science". (2) One will appear in a forthcoming edition of "Who's Who in America". (3) One is about to assume the position of technical editor of SPSE News which is the organ of the society of photographic sciences and engineers. (4) One is a member of the Editorial Board of Abstracts of Photographic Science and Engineering Literature. (5) One is certified as quality engineer by the American Society for Quality Control. (6) One has participated in several two week seminars for photographic science and engineering. (7) One participated in the ninety-eighth technical conference of the society of motion picture and television engineers in Montreal.

(9) That the services provided by taxpayers are in the nature of business consultation; there is no bar to a corporation carrying on the same or similar type of operations; that there do not appear to be any controls over the behavior or ethics of the practitioners of the type of services provided,

that no particular academic degree appears to be required to engage in the activities carried on by the taxpayers and the activities do not appear to be related to any particular discipline but include varied activities depending upon the problem on which the clients wish to consult the firm.

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

**DECIDES:**

(A) That by virtue of finding of fact (8), the taxpayers were engaged in an unincorporated business within the meaning of section 703 of the Tax Law.

(B) That the statement of audit changes and notice (File No. 3653) were correct as issued by the Department of Taxation and Finance.

(C) That the petition for redetermination is denied.

Dated: Albany, New York, this 10th day of May, 1938.

**STATE TAX COMMISSION**

/s/

JOSEPH H. MURPHY  
**PRESIDENT**

/s/

A. BRUCE MANLEY  
**COMMISSIONER**

/s/

SAMUEL E. LEPLER  
**COMMISSIONER**