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BUREAU OF LAW Determinations A-Z

MEMORANDUM Wagnes, arthus,

TO:

State Tax Commission

FROM:

Vincent P. Molineaux, Hearing Officer

SUBJECT:

ARTHUR VACHER ASSOCIATES

Application for Revision or Refund of Unincorporated Business Taxes under Article 16-A of the Tex Law for the year 1959

A hearing on the above application was held before me at 80 Centre Street, New York, New York on Movember 30, 1966. The issue raised is whether income received by the texpayers for the year in question is income from the practice of a profession for which capital is not a material income producing factor more than 80 percent of the income being derived from personal services of the taxpayers, and therefore exempt from the unincorporated business tax under Section 386 of the Tax Law.

The firm was in existence from January 1 to September 30, 1959 at which time a corporation was organized to take over the operation. Arthur M. Wagner, one of the partners, studied engineering at Vanderbilt University for three semesters and continued his studies for three years at Fratt Institute in Brooklyn in the Department of Industrial Design. He taught Industrial Design students at Pratt Institute for six years as a member of the "professional faculty." He also taught at Parsens School of Design and at Cooper Union. He holds no scadenic degree.

The other partner, Berbare Carr Wagner, studied design at Prett Institute for four years and was graduated but bolds no degree. She taught at Pratt Institute for eight years as a member of the "professional faculty" and also taught at Parsons School.

Prett Institute has been recognized by the Board of Regents since the middle 50's and is now authorized to confer a degree of Bachelor of Industrial Design.

The firm had no inventory and the investment was at all times less than \$5,000. (pgs. 38 & 53) All of the work product of the organization was that of the partners or produced under their close supervision. (pgs. 41 & 43) During the year in question the taxpayer's firm was engaged in the following jobs:

- (A) Designed for Holt-Howard Associates
  Inc., an electric coffeepot as well as a number
  of ceramic items, cupe, salt and pepper shakers,
  ashtrays, and similar containers which were to
  be mass produced in Portugal, Italy and Japan.
- (B) Taxpayers were engaged on the "total electric home" which was produced as a premotion folder for Westinghouse Electric Corporation representing uses for electrical conveniences in the home. (Taxpayer's Exhibit A) The house it represents was built as a set in Hollywood. The work performed by taxpayers consisted of designing the house, and the rooms, placing of the various electrical conveniences and in some cases, designing their presentation, in cabinets or otherwise.
- (C) Texpayers designed three comfort stations, the International Pavillion, Portapavillion Restaurant, entrance ticket selling area, entrance building, Garden Club Shelter, and a large outdoor exhibit called "Slice of Time", all for Sterling Porest Gardens, a public amusement area in Tuxedo, New York. (page 51) The taxpayers are designated in the specifications as architects.
- (D) Taxpayers supervised on-site construction of the United States Government Building, which was prefabricated and previously used at another fair, and all exhibits, for the Righth Tunis International Trade Fair in Tunis, Algeria.
- (E) Taxpayers designed a special camera for Scrolifilm Industries. The camera takes a fremeless picture on horizontally moving film which may be projected very slowly. They also designed and constructed working models and production protetypes of the projector.
- (F) Taxpayers prepared a package for various corporations which they called corporate identity. This coordinates trade-mark, letterhead, forms, copying machinery, package identification, calling

cards, and a machine container.

It would appear that while the petitioners are not en the same level with Teague (Matter of Teague v. Graves, 1941, 261 App. Div. 652 aff'd without opinion 257 N.Y. 549) their activities were varied and covered many phases of the field of design and were supplemented by their teaching the subject in recognised schools of design. It is my opinion that they do come within the Teague decision and are exempt as industrial designers.

I therefore recommend that the determination of the State Tax Commission accepting the claim of the taxpayers as being industrial designers and cancelling the assessment for the year 1959 be substantially in the form submitted herewith.

/s/ VINCENT P. MULINEAUX

VFM: Jum Bog

January 16, 1968

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IN THE MATTER OF THE ADVINGATION

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ANGURE VACUUM AND DAMBARA VACUUM 4/b/s ARRIVER VACUUM AGGREGA AGGGER/FIRS

POR REVISION OR REPORT OF WEIDOGROUP AND INCIDENT TAXES WEIGH ANTIGUE 16-A OF THE TAX LAW FOR THE TRAN 1959

Arthur M. Magner and Barbara Carr Magner doing business under the firm name of Arthur Magner Associates having filed in application for revision or refund of unincorporated business tames under Article 16-A of the Tax Low for the calcular year 1959, and a hearing having been held in connection therealth 64 the office of the State Tax Counterion, 80 Centre Street, New York, New York on the 30th day of Herenber, 1966 before Vincont 7.

Malineaux, Hearing Officer of the Department of Taxation and Finance, and the record having been duly counted and exactiones, The State Tax Counterion bereky finds:

- (1) That Arthur Magner and Barbara Magner, doing business under the firm name of Arthur Magner Associates, filed a partnership return for the year 1959, on which their business is described as architects, and on which so unincorporated business tax was computed or paid.
- (2) That an October 5, 1962, the Income Tax Derson Launed Accomment \$42029510 in the amount of \$696.75 on the ground that the partners were not Licensed architects, and the activities

of the partnerskip constituted a carrying on of an unincorporated business subject to tax under Article 25-A of the Tex law.

- (3) That temperers claim that they were providing the profession of industrial designers and were, therefore, enempt under Section 365 of the Tex Law.
- (4) That temperare were in business from January, 1939 until September, 1939, at which time a corporation was enganised to take ever the operation. (pages 37, 38 and 67)
- (5) That Arthur M. Magner, one of the partners, stabled engineering at Vendertilt University for three consisters, and attended Fratt Institute in Breeklyn for three years in the Department of Industrial Decign. He tought Industrial Decign students at Fratt Institute for aix years as a member of the "professional faculty." He also taught at Faysons School of Decign and at Seeper Union (Inspayors' name, pages 8 and 9). He holds no academic degree.
- (6) That the other partner, Barbara Corr Hagner, studied design at Frest Enstitute for four years and was gradueted but holds no degree. The taught at Frest Enstitute for eight years as a number of the "professional faculty" and also taught at Farsana School (Tanpapers' mano, pages 9 and 18).
  - (7) Buring the year in question tempoperes
  - (A) Designed for Helt-Housed
    Associates, Inc., an electric soffeepet on
    well as a number of sevenie items, exps,
    anlt and popper shahers, ashtroys, and similar semtainess which were to be most preduced in Fortugal; Italy and Japan.
    - (3) Here engaged on the "total

presention felder for Vertinghouse Electrical Corporation representing uses for electrical conventences in the home. (Engagers' Enhibert A) The house it represents use built as a set in Hellywood. The work perfected by tempopers consisted of designing the house and the rooms, placing of the verticus electrical conventences and in some comes, designing their presentation, in cohincts or otherwise.

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- (D) Supervised en-site construction of the United States Severment Bailding, which was prefabricated and previously used at another fair, and all exhibits, for the Righth Tunis International Trade Pair in Tunis, Algeria.
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the projector.

- (7) Proposed a package for verious composed that they called composed them they called composed them. This coordinates trade-mark, letter-bead, forms, copying meshinery, package them. Iftestion, calling cards, and a meshine container.
- (8) That the sum of \$3,500 was invested in the pertuerable at the time of organization and the capital at the time of liquidation use \$5,000 and that there was no inventory and the pertuerable did not provide any materials connected with its services.
- (9) That all of the services were provided by or under the close supervision of the partners.

Deced on the foregoing findings and all of the evidence presented herein, the State Tex Countesian hereby

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- (A) That during the year 1999 tempeyors' activities constituted the practice of the profession of industrial design; that capital was not a material income producing factor; that more than 80 percent of the gross income was derived from percental services actually rendered by the numbers of the perturbable, and that therefore such income is not subject to unincorporated business tax imposed by Article 16-A of the Tax Idu.
- (3) That, accordingly, Associant #43009510 for unincorporated business tex during the year 1959 on said cornings

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une improper and chould be concelled and is hereby amoulted in full.

Detect: Alberry, New York, this 6th day of February , 1955.

/s/ JOSEPH H. MURPHY

/s/ A. BRUCE MANLEY