

## BUREAU OF LAW

## MEMORANDUM

*Unincorp. Bus. Tax*  
*Determinations A-Z*  
*Wagner, Arthur,*  
*Associates*

TO: State Tax Commission

FROM: Vincent P. Molineaux, Hearing Officer

SUBJECT: ARTHUR WAGNER ASSOCIATES

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

A hearing on the above application was held before me at 80 Centre Street, New York, New York on November 30, 1966. The issue raised is whether income received by the taxpayers 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 Pratt 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 Parsons School of Design and at Cooper Union. He holds no academic degree.

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

Pratt 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 Molt-Howard Associates Inc., an electric coffeepot as well as a number of ceramic items, cups, 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 promotion 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) Taxpayers 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 Forest 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 Eighth Tunis International Trade Fair in Tunis, Algeria.

(E) Taxpayers designed a special camera for Scrollifilm Industries. The camera takes a frameless picture on horizontally moving film which may be projected very slowly. They also designed and constructed working models and production prototypes 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 on the same level with Teague (Matter of Teague v. Graves, 1941, 261 App. Div. 652 aff'd without opinion 207 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 recognized 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. MOLINEAUX  
Hearing Officer

VPM:jmm  
Enc.

January 16, 1968

1-29-68



**STATE OF NEW YORK  
STATE TAX COMMISSION**

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**IN THE MATTER OF THE APPLICATION**  
**OF**  
**ARTHUR WAGNER AND BARBARA WAGNER**  
**d/b/a ARTHUR WAGNER ASSOCIATES**  
**FOR REVISION OR REFUND OF**  
**UNINCORPORATED BUSINESS TAXES UNDER**  
**ARTICLE 16-A OF THE TAX LAW FOR**  
**THE YEAR 1959**  
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Arthur M. Wagner and Barbara Carr Wagner doing business under the firm name of Arthur Wagner Associates having filed an application for revision or refund of unincorporated business taxes under Article 16-A of the Tax Law for the calendar year 1959, and a hearing having been held in connection therewith at the office of the State Tax Commission, 80 Centre Street, New York, New York on the 30th day of November, 1966 before Vincent F. Malinowski, 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 Arthur Wagner and Barbara Wagner, doing business under the firm name of Arthur Wagner Associates, filed a partnership return for the year 1959, on which their business is described as architects, and on which no unincorporated business tax was computed or paid.

(2) That on October 5, 1962, the Income Tax Bureau issued Assessment #A3029510 in the amount of \$696.75 on the ground that the partners were not licensed architects, and the activities

of the partnership constituted a carrying on of an unincorporated business subject to tax under Article 26-A of the Tax law.

(3) That taxpayers' claim that they were practicing the profession of industrial designers and were, therefore, exempt under Section 386 of the Tax law.

(4) That taxpayers were in business from January, 1939 until September, 1939, at which time a corporation was organized to take over the operation. (pages 37, 38 and 67)

(5) That Arthur H. Wagner, one of the partners, studied engineering at Vanderbilt University for three semesters, and attended Pratt Institute in Brooklyn for three years 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 Parsons School of Design and at Cooper Union (Taxpayers' memo, pages 8 and 9). He holds no academic degree.

(6) That the other partner, Barbara Carr Wagner, studied design at Pratt Institute for four years and was graduated but holds no degree. She taught at Pratt Institute for eight years as a member of the "professional faculty" and also taught at Parsons School (Taxpayers' memo, pages 9 and 10).

(7) During the year in question taxpayers:

(A) Designed for Helt-Howard Associates, Inc., an electric coffeepot as well as a number of ceramic items, cups, salt and pepper shakers, ashtrays, and similar containers which were to be mass produced in Portugal, Italy and Japan.

(B) Were engaged on the "total

electric home" which was produced as a promotion folder for Westinghouse Electric Corporation representing uses for electrical conveniences in the home. (Taxpayers' 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) Designed three comfort stations, the International Pavilion, Fortapavillion Restaurant, entrance ticket selling area, entrance building, Garden Club Shelter, and a large outdoor exhibit called "Sliver of Time" for Sterling Forest Gardens, a public amusement area in Tuxedo, New York. (page 51) The taxpayers were designated in the specifications as architects.

(D) Supervised on-site construction of the United States Government Building, which was prefabricated and previously used at another fair, and all exhibits, for the Eighth Tunis International Trade Fair in Tunis, Algeria.

(E) Designed a special camera for Scrolifilm Industries which takes a frameless picture on horizontally moving film which may be projected very slowly. Also designed and constructed

working models and production prototypes of the projector.

(F) Prepared a package for various corporations which they called corporate identity. This coordinates trade-mark, letter-head, forms, copying machinery, package identification, calling cards, and a machine container.

(G) That the sum of \$3,900 was invested in the partnership at the time of organization and the capital at the time of liquidation was \$5,000 and that there was no inventory and the partnership did not provide any materials connected with its services.

(H) That all of the services were provided by or under the close supervision of the partners.

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

**DETERMINES:**

(A) That during the year 1939 taxpayers' 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 personal services actually rendered by the members of the partnership, and that therefore such income is not subject to unincorporated business tax imposed by Article 16-A of the Tax Law.

(B) That, accordingly, Assessment #10023510 for unincorporated business tax during the year 1939 on said earnings



was improper and should be cancelled and is hereby cancelled  
in full.

Dated: Albany, New York, this 6th day of February , 1936.

STATE TAX COMMISSIONER

/s/

JOSEPH H. MURPHY

/s/

A. BRUCE MANLEY