

STATE OF NEW YORK
STATE TAX COMMISSION

HEARING UNIT - File Copy

TAX 4BT

ART. 16-A SECS. 386j

KEY WORDS _____

CROSS REFS. _____

CASE LAW CITATIONS _____

DETERMINATION _____

REMARKS _____

In the Matter of the Application
of
PHILIP & LEONARD BERMAN
For Revision or Refund of Unincorporated
Business tax under Article 16-A of the
Tax Law for the fiscal years ending
February 28, 1957 and February 28, 1960

The taxpayers having filed an application pursuant to Sections 386j and 374 of the Tax Law for revision of a notice of additional assessment dated September 12, 1960, for the fiscal year ending February 28, 1957, and a further notice of additional assessment dated April 16, 1964 for the fiscal year ending February 28, 1960, each for unincorporated business taxes imposed under Article 16-A of the Tax Law; and such applications having been denied and a hearing thereon demanded and duly held before Nigel G. Wright, Hearing Officer, and the record having been duly examined and considered,

The State Tax Commission hereby

FINDS:

1. The sole issue presented herein is whether the taxpayers are exempt from the unincorporated business tax on the grounds that they are engaged in a profession within the intent of the statute. The computation of the tax otherwise due is conceded to be correct. The penalty asserted for 1957 has not been separately contested.

2. The assessment for the fiscal year ending February 28, 1957, is for \$108.19, with interest, plus a penalty under Section 376(4) of the Tax Law for failure to supply information and the assessment for the fiscal year ending February 28, 1960, is for \$1212.94 with

interest. The assessments for the fiscal years ending February 28, 1957, and February 28, 1960, have been paid.

3. The taxpayer's enterprise is the investigation, for insurance underwriters, of fire losses in the soft goods field. They are accredited by the loss committee of the New York Board of Fire Underwriters and are on the approved list of probably every major insurance company in New York City. They have no knowledge of any competitors so accredited and approved and can be considered a unique enterprise.

4. Fire loss appraisal involves, among other things, the examination of damaged goods at the scene of a fire and the estimation of inventories from books of account and tax statements.

5. Fire loss appraisal is not the subject of any academic courses or degree programs given in any college or university in the United States. Academic training, even in a variety of schools, would not alone qualify an individual in the appraisal of fire losses of soft goods.

6. Mr. Philip Berman has a Bachelor of Law degree and is a member of the New York Bar. At one time, he was in business with his father as a tailor. Then, he was a sales agent for a woolen mill. Then, he worked for Mr. David Weinstock, at the time, the only accredited fire loss adjuster in the soft goods field, for two or three years until Mr. Weinstock died. He was engaged in his own business of fire loss appraisal for about ten years before he entered into partnership in 1956 with his brother, Leonard Berman.

7. Mr. Leonard Berman has a Bachelor degree in Physics and a Masters Degree in Business Administration from Columbia University with a Major in Statistics and a Minor in Accounting. He has been an assistant general manager of ladies wear, a head buyer of mens wear for Montgomery Ward and merchandise manager of mens and boys

wear for Federated Department Stores. He has taught merchandising at the City College of New York and lectured in fire loss appraisal to insurance company personnel.

8. Mr. Leonard Berman testified that all of his experience, including his work experience, has contributed markedly to his proficiency in his work.

Upon the foregoing findings and all the evidence in the case,
The State Tax Commission

DETERMINES:

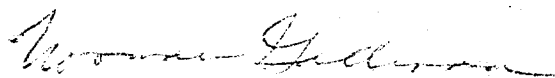
A. Neither the activity of fire loss appraisal nor the specialty of fire loss appraisal of soft goods is a profession. The taxpayers individually are not professionals.

B. The assessments do not include taxes or other charges which could not have been lawfully demanded and such assessments are affirmed in the amounts shown in paragraph two together with such interest and additional charges, if any, as may be lawfully due under Sections 376 and 377 of the Tax Law.


Dated: Albany, New York

STATE TAX COMMISSION

March 9, 19 70


PRESIDENT


COMMISSIONER


COMMISSIONER