

BUREAU OF LAW

MEMORANDUM

157 Determinations
A-Z
Blumer, Fridolin J.

TO: The State Tax Commission

FROM: Solomon Sies

SUBJECT: FRIDOLIN J. BLUMER

1956 Assessment No. B-739065
 1957 Assessment No. B-834399

A formal hearing was held in the above matter at the New York City office.

The issue involved herein is whether the taxpayer's activities during the years in question constituted a recognized profession exempting the income derived therefrom from the imposition of unincorporated business income tax within the intent and meaning of Section 386, Article 16-A of the Tax Law.

The taxpayer is not contesting the normal tax assessments for the years in issue.

The taxpayer filed personal income tax returns for the years 1956 and 1957 in which he listed on Schedule A the following income:

	<u>1956</u>	<u>1957</u>
Commercial Decal	\$12,750.00	\$15,000.00
Onondaga Pottery	<u>5,200.00</u>	<u>3,600.00</u>
TOTALS	\$18,250.00	\$18,600.00

as "industrial designer" at Lane Gate Road, Cold Spring, New York, which is also the taxpayer's residence address. More than 80% of the gross income was derived from the personal services of the taxpayer and capital is not an income producing factor.

The taxpayer attended the Industrial Museum Art School in St. Gall, Switzerland, Grande Chemier, Biblioteque National and the Library of the Petit Palais in Paris, where he studied painting and the application of design to industry. The taxpayer also studied at the Art Students League in New York. The taxpayer has been engaged in the designing of textiles and also designing chinaware for over twenty (20) years, and has taught art in a public high school in the State of New York.

In connection with the taxpayer's activities for Commercial Decal, the taxpayer prepared rough sketches and created ideas which were completed by other artists employed by the principal. This company was engaged in making decalcomania prints which they sold

to porcelain, earthenware, ceramic and glass manufacturers throughout the country. The decals were used for tiles, chinaware and glassware. The company also produced a plastic film that went on earthenware. With respect to the work performed for Onondaga Pottery, who manufacture Syracuse china, the taxpayer designed decorations and also created new shapes for the china itself consisting of cups, saucers, vases, etc. This chinaware was sold to the public and used for utilitarian purposes.

Although the taxpayer's representative attempted to show that the activities of the taxpayer were similar or akin to that of an industrial designer in accord with the decision in the case of Matter of Teague v. Graves, 261 App. Div. 652, aff'd, 287 N.Y. 549, he fell far short of his mark. The activities of the taxpayer are not in any way related or comparable to the activities of Teague nor is the taxpayer's training similar to Teague's. The taxpayer testified that he did not in any way contribute to the manufacture of the decals or designs submitted (Minutes of Hearing, Page 28). With regard to the work for Onondaga Pottery, the taxpayer testified that he worked with the men who are in charge of the first fired model (Minutes of Hearing, Page 24).

In the Matter of DeVries, 266 App. Div. 1030, aff'd. 292 NY 529, a furniture designer was not considered engaged in the practice of a profession. In that case, the taxpayer had studied various branches of art including sculpture and architectural designing and also claimed that he was an industrial designer. In the Matter of White, 11 A D 2d 854, appeal denied 11 A D 2d 964, aff'd. 9 N.Y. 2d 995, it was held that the execution of drawings for business or commercial purposes does not constitute the practice of a profession.

I am, therefore, of the opinion that (a) the activities of the taxpayer during the years in question did not constitute that of an industrial designer within the purview of the Teague case; (b) that the taxpayer's activities preparing rough sketches used in making decalcomania prints for reproduction and used for commercial and business purposes and the designing and decorating of chinaware for utilitarian purposes do not constitute the practice of a profession within the intent and meaning of Section 386 of the Tax Law; (c) that the taxpayer's activities during the years in question and the income therefrom are subject to unincorporated business tax in accordance with Section 386, Article 16-A of the Tax Law.

For the reasons stated above, I recommend that the determination of the Tax Commission in the above matter be substantially in the form submitted herewith.

SOLOMON SLES

Hearing Officer

SS/kk:sc

Encls.

April 21, 1969

STATE OF NEW YORK
STATE TAX COMMISSION

IN THE MATTER OF THE APPLICATIONS
OF
FRIDOLIN J. BLUMER
FOR REVISION OR REFUND OF UNINCORPORATED BUSINESS TAXES UNDER ARTICLE 16-A OF THE TAX LAW FOR THE YEARS 1956 AND 1957

Fridolin J. Blumer, 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 1956 and 1957, 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 fifteenth day of January, 1964, before Solomon Sies, hearing officer of the Department of Taxation and Finance, at which hearing the taxpayer appeared personally and was represented by Leonard E. Golditch, Esq., and the record having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That the taxpayer filed personal income tax returns for the years 1956 and 1957 in which he listed on Schedule "A" the following income:

	<u>1956</u>	<u>1957</u>
Commercial Decal	\$12,750.00	\$15,000.00
Onondaga Pottery	<u>5,500.00</u>	<u>3,600.00</u>
TOTAL	\$18,250.00	\$18,600.00

from business or profession as "industrial designer" conducted at Lane Gate Road, Cold Spring, New York, which is also the taxpayer's residence address; that more than 80% of the gross income was derived from personal services of the taxpayer and capital was not an income producing factor; that the taxpayer did not file any

unincorporated business tax returns for the years 1956 and 1957 claiming to be exempt therefrom; that on said returns the taxpayer claimed an additional exemption for being over 65 years of age.

(2) That on February 11, 1960 and January 31, 1961, the Department of Taxation and Finance made additional assessments against the taxpayer (Assessment Nos. B 739065 and B 834399) for the years 1956 and 1957, respectively, disallowing the additional exemption claimed for said years for age on the ground that the amount of exemption permissible must be reduced by the amount by which the gross income exceeds \$6,000 and further holding that the activities of the taxpayer constituted the carrying on of an unincorporated business subject to unincorporated business tax; that additional normal and unincorporated business taxes were imposed as follows: for 1956, normal tax \$24, unincorporated business tax \$173.80, total \$197.80; for 1957, normal tax \$9.48, unincorporated business tax \$230.81, total \$240.29; that the taxpayer is not contesting the normal tax assessments for the years in issue.

(3) That the taxpayer attended the Industrial Museum Art School in St. Gall, Switzerland, Grande Chemier, Bibliotheque National and the Library of the Petit Palais in Paris, where he studied painting and the application of design to industry; that the taxpayer also studied at the Art Students League in New York; that the taxpayer has been engaged in the designing of textiles and also designing chinaware for over twenty (20) years, and has taught art in a public high school in the State of New York.

(4) That in connection with the taxpayer's activities for Commercial Decal, the taxpayer prepared rough sketches and created ideas which were completed by other artists employed by the principal; that this company was engaged in making decalcomania prints which they sold to porcelain, earthenware, ceramic and glass

manufacturers throughout the country; that the decals were used for tiles, chinaware and glassware; that the company also produced a plastic film that was placed on earthenware; that the taxpayer did not in any way contribute to the manufacture of the decals or designs submitted (Minutes of Hearing, page 28).

(5) That with respect to the work performed for Onondaga Pottery who manufactures Syracuse china, the taxpayer designed decorations and also created new shapes for the china itself consisting of cups, saucers, vases, etc.; that said chinaware was sold to the public and used for utilitarian purposes; that the taxpayer worked with the men who were in charge of producing the first fired model (Minutes of Hearing, page 24).

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

DETERMINES:

(A) That the taxpayer's activities during the years 1956 and 1957 more fully described and set forth in Findings (3) and (4) above, do not constitute the practice of a profession so as to exclude the income derived therefrom from the imposition of unincorporated business income tax within the intent and meaning of Section 386 of the Tax Law; that the activities of the taxpayer during the aforementioned years were conducted wholly within the State of New York and constituted the carrying on of an unincorporated business in accordance with Article 16-A of the Tax Law.

(B) That, accordingly, the assessments for the years 1956 and 1957 (Assessment Nos. B 739065 and B 834399) are correct, that said assessments do not include any tax or other charge which could not have been lawfully demanded and that the taxpayer's

applications for revision or refund filed with respect thereto be
and the same are hereby denied.

Dated: Albany, New York on the 6th day of October , 1969.

STATE TAX COMMISSION

/s/

NORMAN GALLMAN

President

/s/

A. BRUCE MANLEY

Commissioner

/s/

MILTON KOERNER

Commissioner