

## BUREAU OF LAW

## MEMORANDUM

*U. B. T. Determinations*  
*A-Z*  
*Clark - Geo. H. Associates*

TO: State Tax Commission

FROM: Solomon Sies, Hearing Officer

SUBJECT: GEORGE W. CLARK and CHARLES F. LUDWIG,  
individually and as co-partners d/b/a  
GEORGE W. CLARK ASSOCIATES,  
Tax Years 1963, 1964 and 1965--  
Article 23

The issue involved herein is whether the activities of the above architectural partnership constitutes the exempt practice of a profession for unincorporated business tax purposes, where one of the two partners is not licensed to practice architecture in the State of New York.

In 1947, George W. Clark received a Bachelor of Architecture degree from Columbia University. He received a license to practice architecture in the State of New York that same year. He is also a licensed architect in the States of Maine, New Hampshire, Vermont, Massachusetts, New Jersey, Connecticut, Delaware, Pennsylvania and the District of Columbia. Mr. Clark has been self-employed as a licensed architect from 1950 to 1961.

Charles F. Ludwig attended Cooper Union College of Fine Arts from 1937 until 1940, taking courses allied to architecture. He subsequently attended Newark College of Engineering, taking courses related to architecture. He did not receive any degree or certificate in architecture from either institution. He was employed by Gibbs and Cox, naval architects, and subsequently by George W. Clark. In December, 1955, he received his license to practice architecture in the State of New Jersey. This is the only state in which he holds a license to practice architecture. Mr. Ludwig has applied for a license to practice architecture in the State of New York, but has been advised by the Education Department that he must take an examination before such license will be issued to him. Mr. Ludwig, as of the date of the hearing, was not licensed to practice architecture in the State of New York.

In 1961, George W. Clark and Charles F. Ludwig formed the partnership of George W. Clark Associates. Clark owns a 55% interest in the partnership and Ludwig owns a 45% interest therein. Profits and losses are shared in the same ratio. The partnership maintains an office at 2 West 45th Street, New York City pursuant to a lease signed by both partners. The partnership is primarily engaged in the planning and designing of bank buildings, both on new structures and on alterations. The work is performed both within and without the State of New York although the partnership has no other place of business except in the State of New York. The partnership has approximately six to seven employees, three of

whom are licensed architects, two draftsmen and two clerical employees. Mr. Ludwig consults with Clark and clients with respect to plans and designs. He also supervises the technical employees and the other architects in the office. Only the seal of Clark appears on plans submitted in connection with architectural work performed by the partnership in the State of New York. The letterhead of the partnership (Taxpayer's Exhibit #3) is as follows: "GEORGE W. CLARK ASSOCIATES ARCHITECTS, 2 West 45th Street, New York 38, New York MD 1-1870". The name "George W. Clark Associates" also appears on the door of the office of the partnership. Only the name of George W. Clark appears on the standard form of agreement between owner and architect. The compensation paid pursuant to such agreements is included in the partnership's income.

Section 7301(3), Article 147 of the Education Law defines the practice of architecture as follows:

"3. A person practices architecture within the meaning and intent of this article, who holds himself out as able to perform or who does perform any professional service such as consultation, investigation, evaluation, planning, design, including aesthetic and structural design, or responsible supervision of construction, in connection with any private or public buildings, structures or projects, or the equipment or utilities thereof, or the accessories thereto, wherein the safeguarding of life, health or property is concerned or involved, when such professional service requires the application of the art and science of construction based upon the principles of mathematics, aesthetics and the physical sciences."

Section 7302(1) of the Education Law, provides, in part, as follows:

"1. In order to safeguard life, health and property, no person shall practice architecture in this state, or use the title architect or any title, sign, card or device to indicate that such person is practicing architecture or is an architect, unless such persons shall have secured from the regents a license or temporary permit as architect, in the manner hereinafter provided, and shall thereafter comply with the provisions of this article. A certificate of registration as registered architect, heretofore duly issued under the laws of this state, shall serve the same purpose as, and is hereby declared to be, the license required by this article. Every holder of a license shall display it in a conspicuous place in his principal office, place of business or employment."

In the instant case, the partnership and the unlicensed partner were holding themselves out as engaged in the practice of architecture in violation of the provisions of Section 7302 of the Education Law.



In Formal Hearing Determination in the Matter of Conklin & Kunts in which one of two partners, who acted as a team in land surveying, was not a licensed land surveyor, it was held that the partnership was not engaged in the practice of an exempt profession for unincorporated business tax purposes. (Copy of memorandum of Counsel Best is attached.)

In hearing determination in the Matter of Klein and Mittleman, dated July 21, 1967, (copy attached) the co-partners were acting as supervising engineers although one partner was not a licensed professional engineer. It was held that the partnership was not practicing a profession entitled to a professional exemption.

If the unlicensed member of a professional partnership is not practicing the profession and is not holding himself out to the public as engaged in such practice, unincorporated business taxes would not be assessed (see letter of Commissioner Murphy, dated March 1, 1967, copy attached).

I am therefore of the opinion that the partnership, as an entity, was not practicing a profession entitled to a professional exemption within the intent and meaning of Section 703(e) of the Tax Law. I am of the further opinion that it would be contrary to public policy to grant the partnership a professional exemption from unincorporated business tax when it is in violation of the provisions of the Education Law.

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

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SOLOMON SIES  
Hearing Officer

SS:aw/ms  
Encs.

July 1, 1969

It is not possible to determine the exact date of the first meeting of the committee. The committee was formed in the summer of 1941, and its first meeting was held in the fall of 1941. The committee was formed by the National Security Council, and its purpose was to study the problem of the control of atomic energy.

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SECRET

**STATE OF NEW YORK  
STATE TAX COMMISSION**

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**IN THE MATTER OF THE PETITION**

**OF**

**GEORGE W. CLARK AND CHARLES F. LUNN  
INDIVIDUALLY AND AS CO-PARTNERS R/A  
GEORGE W. CLARK ASSOCIATES**

**FOR A REDETERMINATION OF A DEFICIENCY  
OR FOR REFUND OF UNINCORPORATED BUSI-  
NESS TAXES UNDER ARTICLE 23 OF THE  
TAX LAW FOR THE YEARS 1963, 1964 AND  
1965**

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The taxpayers, having filed a petition for redetermination of a deficiency or for refund of unincorporated business taxes imposed under Article 23 of the Tax Law for the years 1963, 1964 and 1965, 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 21st day of June, 1968 before Solomon Sica, Hearing Officer of the Department of Taxation and Finance at which hearing the taxpayers appeared and were represented by Satterlee, Warfield & Stephens, Esqs., by Roger Evan Sher, Esq. of Counsel, testimony having been taken and the matter having been examined and considered,

**The State Tax Commission hereby finds:**

(1) That the taxpayers filed partnership returns for the years 1963, 1964 and 1965 in which they reported net income in the amounts of \$59,175.87, \$33,997.48 and \$33,946.06 for said respective years; that the taxpayers indicated on said returns the business of the partnership as "architecture"; that the partnership did not file any unincorporated business tax returns for said years on the ground that they claimed professional exemption from unincorporated business tax,

(2) That on April 10, 1967, a statement of audit charges was issued against the taxpayers imposing unincorporated business

taxes for the years 1963, 1964 and 1965 in the amount of \$3,442.22 with interest of \$459.77 for a total of \$3,901.99 and, accordingly, issued a notice of deficiency therefor, upon the ground that since all of the member partners were not licensed by the State of New York to practice the profession of architecture within this State, the business activities of the partnership constituted the carrying on of an unincorporated business in accordance with the provisions of the Tax Law and that the net income derived therefrom was subject to the unincorporated business tax.

(3) That in 1947, George W. Clark received a bachelor of architecture degree from Columbia University; that he received a license to practice architecture in the State of New York that same year; that he was also a licensed architect in the states of Maine, New Hampshire, Vermont, Massachusetts, New Jersey, Connecticut, Delaware and the District of Columbia; that George W. Clark has been self-employed as a licensed architect from 1950 to 1961.

(4) That Charles F. Ludwig attended Cooper Union College of Fine Arts from 1937 until 1940, taking courses allied to architecture; that he subsequently attended Newark College of Engineering, taking courses related to architecture; that he did not receive any degree or certificate in architecture from either institution; that he was employed by Gibbs and Cox, naval architects, and subsequently by George W. Clark; that in December, 1955, he received his license to practice architecture in the state of New Jersey; that this is the only state in which he holds a license to practice architecture; that Mr. Ludwig has applied for a license to practice architecture in the State of New York, but has been advised by the Education Department that he must take an examination before such license will be issued to him; that Mr. Ludwig, as of the date of the hearing, was not licensed to practice architecture in the State of New York.

(5) That in 1961, George W. Clark and Charles F. Ludwig formed the partnership of George W. Clark Associates; that Clark owns a 95% interest in the partnership and Ludwig owns a 5% interest therein; that profits and losses are shared in the same ratio; that the partnership maintains an office at 2 West 45th Street, New York City pursuant to a lease signed by both partners; that the partnership is primarily engaged in the planning and designing of bank buildings, both on new structures and on alterations; that the work is performed both within and without the State of New York although the partnership has no other place for the transaction of its business except in the State of New York; that the partnership has approximately seven employees, three of whom are licensed architects, two draftsmen and two clerical employees; that Mr. Ludwig consults with Mr. Clark and clients with respect to plans and designs (Minutes of Hearing, p. 40); that he also supervises the technical employees and the other architects in the office (Minutes of Hearing, pp. 23 and 30); that only the seal of Clark appears on plans submitted in connection with architectural work performed by the partnership in the State of New York; that the letterhead of the partnership (Taxpayers' Exhibit #3) is as follows: "GEORGE W. CLARK ASSOCIATES ARCHITECTS, 2 West 45th Street, New York 36, New York NY 1-1870"; that the name "George W. Clark Associates" also appears on the door of the office of the partnership; that only the name of George W. Clark appears on the standard form of agreement between owner and architect; that the compensation paid pursuant to such agreements is included in the partnership's income.

(6) That section 7301(3), Article 147 of the Education Law defines the practice of architecture as follows:

"3. A person practices architecture within the meaning and intent of this article, who holds himself out as able to perform or who does perform any professional service such as consultation, investigation, evaluation, planning, design, including aesthetic and structural design, or responsible supervision of construction, in connection with any private or public buildings, structures or projects, or the equipment or



utilities thereof, or the accessories thereto, wherein the safeguarding of life, health or property is concerned or involved, when such professional service requires the application of the art and science of construction based upon the principles of mathematics, aesthetics and the physical sciences."

(7) That section 7302(1) of the Education Law, provides, in part, as follows:

"1. In order to safeguard life, health and property, no person shall practice architecture in this state, or use the title architect or any title, sign, card or device to indicate that such person is practicing architecture or is an architect, unless such persons shall have secured from the regents a license or temporary permit as architect, in the manner hereinafter provided, and shall thereafter comply with the provisions of this article. A certificate of registration as registered architect, heretofore duly issued under the laws of this state, shall serve the same purpose as, and is hereby declared to be, the license required by this article. Every holder of a license shall display it in a conspicuous place in his principal office, place of business or employment."

(8) That the partnership and the unlicensed partner were holding themselves out as engaged in the practice of architecture contra to the provisions of section 7302 of the Education Law of the State of New York.

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

**DECIDES:**

(A) That during the years in issue, the taxpayer partnership was not engaged in the practice of the profession of architecture since it failed to meet the requirements of section 7302 of the Education Law.

(B) That the taxpayer partnership, accordingly, was not engaged in the practice of a profession within the intent and meaning of section 703(c) of the Tax Law; that the taxpayer partnership, during the years in issue, was not entitled to a professional exemption and was during the years in issue, therefore, subject to unincorporated business taxes.

(C) That, accordingly, the statement of audit charges and notice of deficiency imposing unincorporated business taxes against the taxpayer partnership for the years 1963, 1964 and 1965 is correct; that the same does not include any tax or other charge which could not have been lawfully demanded; that the petition of the taxpayers for redetermination of a deficiency or for refund of unincorporated business taxes filed with respect thereto be and the same is hereby denied.

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

**STATE TAX COMMISSION**

/s/                    NORMAN GALLMAN  
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PRESIDENT

/s/                    A. BRUCE MANLEY  
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COMMISSIONER

/s/                    MILTON KOERNER  
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COMMISSIONER