

BUREAU OF LAW

MEMORANDUM

U.B.T. Determinations
A-2
Kormes, Mark

TO: State Tax Commission

FROM: Martin Schapiro, Hearing Officer

SUBJECT: Application of Mark Kormes -
Unincorporated Business Tax
for the Year 1960

The taxpayer, Mark Kormes, a consulting actuary had originally filed applications for years prior to 1953 on the ground that he was engaged in a profession. The denial of relief to the taxpayer by the State Tax Commission was sustained by the Court in the case of Kormes v. Murphy, 9 A D 2d 1003. The Court held that the activities of an actuary did not constitute the practice of a profession.

Thereafter, the taxpayer made applications for the years 1953 through 1959 submitting numerous exhibits, documents, and testimony tending to show that an actuary was a profession and recognized as such by leading persons and educators. Testimony was taken at two full days of hearings. However, a substantial portion of the testimony involving expert witnesses was never transcribed by the hearing reporter, who moved to California. Furthermore, the originals of some portions of the transcript, which were returned for correction, were not returned and only copies retained. In view of the fact that key portions of the testimony were lost, which would entail witnesses' expenses to the taxpayer exceeded his liability, the Attorney General settled the case and directed refunds.

Another hearing was held with respect to the year 1960. It was agreed that all the prior testimony and exhibits, which were in possession of the Tax Commission, whether originals or copies, would be marked as evidence into this hearing, and that the missing portion would not be received as evidence.

Since the facts are virtually identical with the facts appearing in the aforesaid case, Kormes v. Murphy, *surpa*, I am of the opinion that such case sustains our determination that the taxpayer, who has since incorporated, was not a profession, but used mathematical skills in advising management on its business affairs, similar to that of an economic consultant, a management consultant, an efficiency expert or an industrial engineer.

The proposed determination, therefore, accordingly, sustains its previous determination for prior taxable years. Since the taxpayer has instituted a proceeding to compel the

issuance of this determination, it is important that this determination be quickly reviewed, and if acceptable, to be returned to the Law Bureau for mailing.

Hearing Officer

MS:nn
October 17, 1969

Enc.

STATE OF NEW YORK
STATE TAX COMMISSION

IN THE MATTER OF THE APPLICATION
OF
MARK KORMES
FOR REVISION OR REFUND OF UNINCORPORATED
BUSINESS TAXES UNDER ARTICLE 23 OF THE
TAX LAW FOR THE YEAR 1960

Mark Kormes, the taxpayer herein, having filed an application for revision or refund of unincorporated business taxes under Article 23 of the Tax Law for the year 1960, and a hearing having been completed in connection therewith at the office of the State Tax Commission, 80 Centre Street, New York, New York on July 24, 1968, before Martin Schapiro, Hearing Officer of the Department of Taxation and Finance, at which hearing the taxpayer appeared personally and was represented by John W. Kormes, Esq., testimony having been taken, and the matter having been duly examined and considered,

The State Tax Commission hereby finds:

(1) that the taxpayer filed an unincorporated business tax return for the year 1960 computing therein unincorporated business taxes due in the amount of \$416.80; that he listed his business activity as "Consulting Actuary, Professional Actuarial Services"; that on June 14, 1961 he filed an application for refund of tax in the amount of \$416.80 alleging that he was engaged in the practice of a profession exempt from taxes under the Tax Law; that such application was denied on January 3, 1962, and a timely demand for hearing was filed by the taxpayer on January 12, 1962.

(2) The taxpayer holds a Ph.D. degree in mathematics from Columbia University and is a Fellow of the Casualty Actuarial Society; he is a member of the International Congress of Actuaries, of the Intra-American Association of Social Security Actuaries, of the Biometric Society, of the American Statistical Society, and the New York Academy of Sciences; the taxpayer, furthermore, has written numerous published articles relating to actuarial and statistical methods.

(3) During the years 1924 and 1925, the taxpayer was employed by an actuary firm and doing actuarial work in connection with pension plans; from 1925 to 1930, he was Assistant Statistician at the National Bureau of Casualty Underwriters in New York City where he was trained in rate-making methods pertaining to casualty insurance; from 1930 to 1938, he was an actuary for the New York Compensation Insurance Rating Board, in charge of making rates for workmen's compensation insurance for all companies doing business in the State of New York; from 1938 to 1940, he was an Assistant Director in the New York State Insurance Fund, where as alleged by the taxpayer, his suggestions have resulted in a great deal of savings in the cost of administration.

(4) From 1940 through the year in issue and up to date, the taxpayer was and is engaged in his practice of consulting as a consulting actuary to a large and varied number of principals; that subsequent to the year in issue, the taxpayer has incorporated and is now practicing in corporate form; that the taxpayer's activities primarily consisted of (a) advising various organizations on the actuarial aspects of their employee pension plans, and (b) advising Blue Cross, Blue Shield and insurance companies on its rates to subscribers.

(5) That with respect to the pension plans, the actuary's activities consist of advising his clients of the costs of alternate plans submitted by the clients and of arriving at employer and employee contributions to such plans; that the actuarial computations are mathematical computations utilizing probability theory and based upon the life expectancies of the employees, income and length of employment, amounts to be awarded, and numerous other factors.

(6) That with respect to insurance rates, the taxpayer's activities consist of making insurance rates, that is, advising how much to charge each subscriber in order to collect sufficient amounts of premiums; that the actuarial computations are mathematical computations utilizing probability theory and based upon knowledge of the nature of the insurance risk involved and numerous data concerning such risk.

(7) That the taxpayer certifies to his principals that all computations have been performed with accepted actuarial principles and practice; that, however, such certification is neither a legal requirement nor a specific requirement of any organization or society of which the taxpayer is a member.

(8) That the taxpayer has submitted numerous written statements, books and portions thereof, and statements by witnesses to the effect that actuarial practice is the practice of a profession requiring advanced learning in mathematics, and is recognized as a profession by numerous educators, colleges, universities, sister states and other nations.

(9) That numerous colleges throughout the United States offer courses in actuarial mathematics or actuarial science and there is one college of insurance; that in order to be a member of the Casualty Actuarial Society the passing of a written

examination offered by such society; in order to qualify to take such an examination, the exact type of college degree is not a consideration; that although a college degree is usual, it is not required; that what is usually required is a limited number of courses in mathematics, but even such studies are not absolutely necessary and a person may be admitted without any formal education.

(10) That although a course of study in actuarial mathematics, and admission to an actuarial society or organization is important in the successful practice of actuarial consultant, there is no specific requirement of study or membership in an actuarial society as a condition precedent to such practice; that furthermore, although the taxpayer himself may have undertaken a prolonged course of study in mathematics, a prolonged course of study has not been shown to be a requirement in the practice of actuarial work or as an actuarial consultant.

(11) That although the taxpayer contends that the activities of an actuary should be recognized as professional, since both certified shorthand reporters and accountants are recognized as professional, actuaries are not under the jurisdiction of the Education Department of the State of New York, can practice as an individuals or as corporations and are not subject to any specific code of conduct set forth in the laws of this State or promulgated thereunder.

Upon all the foregoing facts, the State Tax Commission hereby

DETERMINES:

(A) That the taxpayer's activities as an actuary are substantially the same as recited in the case of Kernes v. Murphy, 9 A D 2d 1003 involving the same taxpayer for a prior year.

(B) That the taxpayer's vocation of consulting actuary was not the practice of a profession within the intent and meaning of the Tax Law.

(C) That such vocation was the application and utility of mathematics to the affairs of business, and such similar to the utilization of economics by an economic consultant to the affairs of business; that the activities of an actuary are akin to those of a management consultant, efficiency expert or industrial engineer since they are carried on in the field of business itself and do not constitute the practice of a profession.

(D) That the taxpayer's application be and the same is hereby denied.

Dated: Albany, New York this 23rd day of October, 1959.

STATE TAX COMMISSION

/s/ NORMAN GALLMAN
PRESIDENT

/s/ A. BRUCE MANLEY
Commissioner

/s/ MILTON KOERNER
Commissioner