

BUREAU OF LAW

MEMORANDUM

*U. B. T. Determination A-Z
Summary, George E.*

TO: The State Tax Commission

FROM: Solomon Sies, Hearing Officer

SUBJECT: GEORGE E. SAMERJAN

1956 Assessment No. TF-146059

Article 16-A

A hearing with reference to the above matter was held before me at 80 Centre Street, New York, New York on February 14, 1964. The appearances and the evidence produced were as shown in the stenographic minutes and exhibits submitted herewith.

A small portion of the testimony taken at the hearing was not transcribed because of the death of the hearing reporter who took the testimony, and her notes could not be transcribed. The taxpayer was so advised and was afforded an opportunity to have a continued hearing. He was furnished with a copy of the stenographic minutes. However, he was unwilling to attend a continued hearing in this matter. The taxpayer submitted additional information.

The issues involved herein are: (1) whether the taxpayer filed a timely application for revision or refund; and (2) whether the activities of the taxpayer during the year 1956 constituted the practice of a recognized profession exempt from unincorporated business tax in accordance with Article 16-A of the Tax Law.

The additional assessment for the year 1956 was made on July 31, 1959 and included additional normal tax in the sum of \$198.62 based upon additional income disclosed as per Federal audit. In addition, there was also imposed unincorporated business tax in the sum of \$332.88. On August 14, 1959, the taxpayer's representative addressed a letter to the Income Tax Bureau, Albany, enclosing a check in payment of the additional normal tax but protested that portion of the assessment imposing unincorporated business tax. The Income Tax Bureau wrote the representative on October 16, 1959 acknowledging the letter previously mentioned but requested additional information as to the services rendered by the taxpayer. Although the taxpayer claims that a Form IT-113 was mailed on April 6, 1960, a search of the file fails to locate the original application for revision or refund alleged to have been filed by the taxpayer on the above mentioned date. I am of the opinion, however, that the letter of protest dated August 14, 1959 constitutes a timely application for revision or refund in accordance with Section 374 of the Tax Law.

The taxpayer reported on Schedule A of his personal income tax return net income in the sum of \$14,190.22 as an artist. He testified at the hearing that during the year in issue, he was engaged as an artist, industrial designer, lecturer, teacher (Minutes of Hearing, page 6). He further testified that roughly 81% of the work which he performed in 1988 was derived from industrial design, "that is the design of packages and the creation of ideas for publishers, for educational institutions, for manufacturers", (Minutes of Hearing, page 7); the taxpayer also testified that approximately 19% of his income involved editorial art and design, which included lectures to publishers (Minutes of Hearing, page 12); the taxpayer's testimony as to specifics regarding industrial design during the year in issue was rather vague and nebulous. The taxpayer was requested to submit additional information setting forth in detail a breakdown of the type of design that he did, the names of the firms and the amount of fees received therefrom (Minutes of Hearing, page 18).

The taxpayer submitted a statement in which he indicated that approximately 19% of his income during the year in issue was derived from editorial art and design which included lectures before publishing houses; that 57% of his income was derived from drawings, paintings and sketches on a variety of themes including religious scenes and still-life scenes which were used either for editorial purposes or for display and exhibitions and did not involve commercial art; that packaging or industrial design accounted for 24% of his total income which involved the creation and execution of design of packages for leading manufacturers in connection with their products.

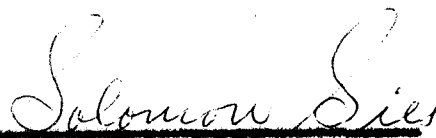
The taxpayer attended Art Center School in Los Angeles, California, during the years 1983 through 1989. Although this was not an accredited art school at the time, the specialized art education the taxpayer received was equivalent to that given at college level. The taxpayer was Art Director for Esquire and Coronet Magazines for a period of approximately five to seven years. He was also Art Director for C.B.S. and the Los Angeles Times. He has done art murals for various post offices throughout the country. He was commissioned by the United States Government Post Office Department to design and execute the South Pole commemorative stamp. His art work has been in the media of oils, water colors and sculpture. His art work has been exhibited in principal museums and galleries. The taxpayer is and has been an instructor and lecturer at New York University giving various courses in advanced creative and graphic design. He has also been an instructor and lecturer at Los Angeles County Museum Art School, Occidental College, Los Angeles, California; Hunter College, New

York City Community College, Pratt Institute, where he gave courses in painting and design.

The taxpayer delivered lectures to the editorial personnel of several large publishing houses in which he discussed contemporary design, visual presentation techniques and art, typography and format, layouts and fresh approaches to use of art, design, typography, charts and diagrams. The lectures also included editorial art. These lectures were similar in scope to the lectures which the taxpayer gave at New York University and other colleges.

Although the taxpayer contends that 24% of his total income for the year 1956 was attributable to packaging or industrial design, he has failed to establish that the alleged industrial design was similar to the work performed by the taxpayer in the case of Taagva v. Graves, 261 App. Div. 852, affirmed, 287 N.Y. 549. However, this issue becomes academic since the taxpayer's adjusted net income after giving him credit for 76% for editorial design, art work and lectures to publishers would amount to \$4,483.26 or less than \$5,000.00 so that no unincorporated business tax would be due. I am, therefore, of the opinion that the assessment should be cancelled.

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.


Hearing Officer

SS:nn
June 24, 1969

Enc.

STATE OF NEW YORK
STATE TAX COMMISSION

IN THE MATTER OF THE APPLICATION

OF

GEORGE E. SAMERJAN

FOR REVISION OR REFUND OF UNINCORPORATED
BUSINESS TAXES UNDER ARTICLE 16-A OF THE
TAX LAW FOR THE YEAR 1956

The taxpayer, George E. Samerjan, having duly filed a timely application for revision or refund of unincorporated business taxes under Article 16-A of the Tax Law for the year 1956, and a hearing having been held in connection therewith at the office of the State Tax Commission at 80 Centre Street, New York, N.Y. on the 14th day of February, 1964, before Solomon Sles, Hearing Officer of the Department of Taxation and Finance, at which hearing the taxpayer appeared personally and testified in connection therewith and the record having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That the taxpayer filed a personal income tax return for the year 1956 in which he reported on Schedule A net income in the sum of \$14,130.22 as an artist; that on July 31, 1959 the Department of Taxation and Finance made an additional assessment against the taxpayer (Assessment No. TF-146059) for the year 1956 imposing additional normal tax in the sum of \$198.62 as a result of additional income disclosed upon Federal audit and further imposed unincorporated business tax in the sum of \$332.88 on the ground that the activities reported by the taxpayer on his return constituted the carrying on of an unincorporated business subject to unincorporated business tax; that the taxpayer has paid the additional normal tax in the sum of \$198.62 and is not contesting that portion of the assessment.

(2) That the taxpayer attended Art Center School in Los Angeles, California, during the years 1933 through 1939; that although

this was not an accredited art school at the time, the specialized art education the taxpayer received was equivalent to that given at college level; that the taxpayer was Art Director for Esquire and Coronet Magazines for a period of approximately five to seven years; that he was also Art Director for C.B.S. and the Los Angeles Times; that he has done art murals for various post offices throughout the country; that he was commissioned by the United States Government Post Office Department to design and execute the South Pole commemorative stamp; that his art work has been in the media of oils, water colors and sculpture; that his art work has been exhibited in principal museums and galleries; that the taxpayer is and has been an instructor and lecturer at New York University giving various courses in advanced creative and graphic design; that he has also been an instructor and lecturer at Los Angeles County Museum Art School, Occidental College, Los Angeles, California; Hunter College, New York City Community College, Pratt Institute, where he gave courses in painting and design.

(3) That during the year 1956, the taxpayer maintained a studio at 80 West 49th Street, New York City; that during said year 57% of the taxpayer's income was derived from art work which consisted of drawings, paintings and sketches on a variety of themes, such as religious scenes, water colors, men working, still-life scenes, etc.; that some of this art work was exhibited in galleries and that some of it appeared in magazines for editorial purposes; that 19% of the taxpayer's income during the year 1956 was derived from lectures delivered to the editorial personnel of large publishing houses; that at said lectures taxpayer discussed contemporary design, visual presentation techniques, typography, art, format, design, and layouts; that the aforementioned lectures were similar to the lectures that the taxpayer delivered as a lecturer at New York University, where he was an instructor and lecturer giving courses in art and advanced graphic design.

(4) That by reason of Finding #3 above, the adjusted

business income of the taxpayer amounts to \$4,483.25 or less than \$5,000.00 so that no unincorporated business tax is due from the taxpayer for the year 1956.

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

DETERMINES:

That the additional assessment of unincorporated business tax against the taxpayer for the year 1956 (Assessment No. TF-146099) was not due and not lawfully demanded and that the aforesaid assessment insofar as it pertains to unincorporated business tax be and the same is hereby cancelled in full.

AND IT IS SO ORDERED.

DATED: Albany, New York, on the 15th day of July , 1969.

STATE TAX COMMISSION


President


Commissioner


Commissioner