L 9 (11-68)

BUREAU OF LAW

MEMORNADUM

Unincorp. Bus. Tax Determinations A-Z
Weisenbacher, Karl W. & Associates

TO: State Tax Commission

FROM: Solomon Sies, Hearing Officer

SUBJECT: KARL W. WEISENBACHER and HERMAN SCHEEFF individually and as co-partners d/b/a KARL W. WEISENBACHER & ASSOCIATES

Petition for Redetermination of the Deficiency or for Refund of Unincorporated Business Taxes under Article 23 of the Tax Law for the Year 1963

JAMES MONGITORE and LUCIO GENOLA d/b/a MONGITORE ASSOCIATES

Application for Revision or Refund of Unincorporated Business Taxes under Article 16-A of the Tax Law for the Fiscal Years Ending April 30, 1959 and April 30, 1960

Petition for Redetermination of a Deficiency or for Refund of Unincorporated Business Taxes under Article 23 of the Tax Law for the Fiscal Years Ending April 30, 1961 and April 30, 1964

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Unincorp. Bus. Tax Determinations A-Z
Mongitore Associates

Separate hearings were held in the above matters at the New York City office. Since common issues of fact and law are involved, this memorandum is being prepared to cover both of the above-captioned matters.

The common issue involved herein is whether the activities of the above land surveying partnership (Weisenbacher & Associates) and the engineering partnership (Mongitore Associates), as entities, constitute the exempt practice of professions for unincorporated business tax purposes, where one of the two partners was not a licensed land surveyor in one case and not a licensed professional engineer in the other.

KARL W. WEISENBACHER AND ASSOCIATES

The taxpayers filed a partnership return for the year 1963 in which they indicated that they were engaged in the business of "surveying" and reported gross receipts of $26,942, payment to

partners--salaries and interest, $12,836.07. The taxpayers did not file an unincorporated business tax return for said year but indicated on Schedule U-D of the partnership return that unincorporated business tax was not applicable. On September 13, 1965, a Statement of Audit Changes was issued against the taxpayer partnership imposing unincorporated business tax in the amount of $290.98 with interest of $24.66 for a total of $315.64 and, accordingly, a Notice of Deficiency was issued therefor upon the ground that the taxpayers' activities reported on their return constitute the carrying on of an unincorporated business, the income of which is subject to unincorporated business tax.

In September, 1959, Karl W. Weisenbacher was licensed by the New York State Education Department as a land surveyor. Herman Schnepf was not licensed by the New York State Department of Education as a land surveyor prior to 1968.

In March, 1962, Karl W. Weisenbacher and Herman Schnepf formed the partnership of Karl W. Weisenbacher & Associates. The co-partners each owned a 50% interest in the partnership and profits and losses were shared equally. The partnership business was conducted at 7 Montauk Highway, Sayville, New York. The clients of the partnership were primarily developers of commercial buildings, owners of residential dwellings and apartment house owners or contract builders. They prepared surveys, maps and prints. The partnership employed a part-time secretary and two assistants to help the partners in the field surveying areas for their correct determination and description and for conveyancing determining boundaries. The partners worked as a team. They performed their own drafting work. The surveys prepared by the partnership were signed by the licensed partner, Mr. Weisenbacher, with his seal as licensed land surveyor, affixed thereto.

In June, 1966, the New York State Department of Education directed that the land surveying partnership of Karl W. Weisenbacher & Associates be discontinued. The partnership in accordance therewith was dissolved and Mr. Schnepf continued as an employee of Mr. Weisenbacher.

JAMES MONGITORE ASSOCIATES

The taxpayer partnership filed partnership returns for the fiscal years ending April 30, 1959, April 30, 1960 and April 30, 1961 in which it reported gross income in the amounts of $222,422.68, $198,792.12 and $218,173.64 for the aforementioned respective years from fees as consulting engineers. The taxpayers did not file any unincorporated business tax returns for the aforementioned tax periods on the alleged ground that unincorporated business tax was not applicable. On March 18, 1963, Notices of Additional Unincorporated Business Tax Assessments were made against the partnership for

the fiscal years ending April 30, 1959 and April 30, 1960 (Assessment Nos. AB 048358 and AB 048359, respectively) in the amounts of $2,557.99 and $2,707.45 upon the ground that the activities of the taxpayers as reported on their returns constituted the carrying on of an unincorporated business, the income of which was subject to unincorporated business tax. For the fiscal year ending April 30, 1964 the partnership filed an unincorporated business tax return and computed the tax due thereon and paid the amount of $2,502.34 under protest. The return indicates that the partnership business was terminated on April 30, 1964. On May 22, 1968, the Department of Taxation and Finance issued a Statement of Audit Changes against the taxpayers for the fiscal year ending April 30, 1961, imposing additional unincorporated business tax in the amount of $3,371.46 with interest of $447.01 for a total of $3,718.47. The taxpayer partnership paid the unincorporated business tax for all the years in issue and filed timely applications for refund thereof.

In 1952, the New York State Education Department granted James Mongitore a license to practice professional engineering. Thereafter, he formed a partnership with one Fred Moesel, a professional engineer licensed by the State of New York. This partnership was dissolved in 1956. Lucio Gemola is not licensed as a professional engineer by the New York State Education Department. The taxpayers formed the partnership of James Mongitore Associates in 1956 maintaining an office at 101 Park Avenue, New York City. Each had a 50% interest in the partnership and profits and losses were shared equally. The partnership performed engineering work on commercial buildings, school buildings, hospitals, churches and office buildings in connection with plumbing, heating, ventilation and air-conditioning of such buildings. The partnership had approximately 10 employees, some of whom were licensed professional engineers, unlicensed graduate engineers and mechanical designers and draftsmen.

The duties of Gemola consisted of supervising personnel in the office. He consulted with the licensed partner on plans and designs. He checked the plans and also initialed some of the floor plans (Minutes of Hearing, page 45, taxpayers' Exhibit No. 1). Plans were approved by the licensed partner, Mr. Mongitore, with his seal affixed thereto.

On or about August 5, 1965, the New York State Education Department directed that the partnership of James Mongitore Associates be discontinued since one of the partners was unlicensed. Accordingly, the partnership was dissolved. Mr. Mongitore continued the practice of professional engineering in his own name with Mr. Gemola as an employee.

In both of the above-captioned matters, the unlicensed individuals were holding themselves out as engaged in the practice of land surveying and professional engineering in violation of the

provisions of Section 7209 of the Education Law which provides, in part, that no firm, co-partnership or joint stock association shall be permitted to practice professional engineering or land surveying unless the individual members are licensed professional engineers or land surveyors.

In Matter of Conklin & Kuntz 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 Mittelman, 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). (See hearing determination in Matter of Dames and Moore, dated May 22, 1967, copy attached.)

In each of the instant cases only one of the co-partners was licensed and the other co-partner was actively engaged and holding himself out to the public as a land surveyor in one case and as a professional engineer in the other case. In addition, the Education Department directed that the partnerships be discontinued because of the activities of the unlicensed member.

I am therefore of the opinion that the partnerships, as entities, were not practicing a profession entitled to a professional exemption within the intent and meaning of Sections 386 and 703(e) of the Tax Law. I am of the further opinion that it would be contrary to public policy to grant the partnerships a professional exemption from unincorporated business tax when they are in violation of the provisions of the Education Law.

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

Solomon Sies
Hearing Officer

SS:dv
Enc.
March 12, 1969

BUREAU OF LAW

MEMORANDUM

TO:

FROM: Commissioners Murphy, Helstein and Sadoff

SUBJECT: R. E. Paul, Operator

Article 145 Education Law

Combined Tax

Formal [illegible] - 1953-1955 Assessments

Formal Determination

The sole question involved here is whether the activities of the above land surveying partnership as an entity constitute the conduct or practice of a profession for unincorporated business tax purposes, where one of the two partners was not a licensed land surveyor.

It is clear from the record that the partnership engaged in land surveying and that the two partners operated as a "team" in the conduct of such surveying. An examination of the pertinent provisions of the Education Law (Article 145) reveals that the practice of land surveying by a partnership in which all members are not licensed land surveyors is not authorized. An informal inquiry on the general question was submitted to the Secretary of the Board of Examiners of Professional Engineers and Land Surveyors by this office. It was indicated that such practice would be the subject of investigation and discipline if disclosed to the Education Department.

Accordingly, the determination holding that such partnership was not engaged in the practice of an exempt profession for unincorporated business tax purposes is approved. Kindly return the entire file to this office upon disposition.

Counsel

TMcG:MC
Enc.
October 9, 1961

BUREAU OF LAW

MEMORANDUM

TO: Commissioners Murphy, Conlon and Macduff

FROM: Francis V. Dow, Hearing Officer

SUBJECT: HERBERT KLEIN & GEORGE MITTLEMAN

For Revision or Refund of Unincorporated Business Taxes Under Article 16-A of the Tax Law for the Year 1956

A hearing with reference to the above matter was held before me on November 17, 1966 at 80 Centre Street, New York, New York. The appearances and the evidence produced were as shown in the stenographic minutes and exhibits submitted herewith.

The issue involved in this matter is whether the income from the activities of the taxpayers as copartners performing services as professional engineers is subject to the unincorporated business tax where one of the partners was not licensed as a professional engineer in New York State.

The taxpayers filed partnership and unincorporated business tax returns for 1956 in which they reported net income of $15,610.50 each from their business as supervising engineers claiming that the income was exempt from the unincorporated business tax.

An assessment for 1956 was issued on April 20, 1959 (Assessment No. B 590783) assessing unincorporated business tax due in the amount of $813.84 on the basis that the taxpayers' activities reported on their return constitute the carrying on of an unincorporated business, the income of which was subject to the unincorporated business tax.

During 1956 the taxpayers, both residing in New York State, formed a partnership for the purpose of performing a contract entered into with Matthew L. Carroll, Inc. acting as supervising engineers of nine construction projects at the request of the American Surety Company, the Surety Company which issued performance bonds on the projects. Eight of the projects were located in New York State. One was located in New Jersey. Both of the taxpayers were paid $33,000 for their services in connection with the nine projects at the rate of $3,000 per month. The partnership had no office outside of New York State. Both taxpayers were graduate engineers. George Mittleman, one of the active members of the partnership, was not licensed as a professional engineer in New York State. Upon

completion of the project at the end of the year, the partnership was dissolved.

The facts in this matter are similar to the determination in the Matter of Conklin & Kuntz in which one of two partners, who acted as a "team" in land surveying, was not a licensed land surveyor where it was held that the partnership was not engaged in the practice of an exempt profession for unincorporated tax purposes. A copy of Counsel Best memorandum in that matter dated October 9, 1961 is attached hereto. As pointed out in a letter of Commissioner Murphy dated March 1, 1967, a copy of which is attached hereto, if the unlicensed member of a professional partnership was not practicing the profession and was not holding himself out to the public as engaged in such practice no unincorporated business taxes would be assessed.

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

Francis V. Blanchfield
Hearing Officer

FVD:ac
Encs.

June 16, 1967

[illegible]

IN THE MATTER OF THE APPLICATION OF HERBERT KLEIN & CHARLES MEHLMAN FOR REVISION OR REFUND OF UNINCORPORATED BUSINESS TAXES UNDER ARTICLE 16-A OF THE TAX LAW FOR THE YEAR 1956

The taxpayers herein having filed an application for revision or refund of unincorporated business taxes imposed 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, 80 Centre Street, New York, New York on November 17, 1966 before Francis V. Dow, Hearing Officer of the Department of Taxation and Finance, at which hearing the taxpayer, Herbert Klein, appeared and testified and the record having been duly examined and considered,

The State Tax Commission hereby finds:

(1) Taxpayers filed a partnership and unincorporated business tax return for 1956 in which they reported net income of $25,610.50 each from their business as supervising engineers and claimed that such income was exempt from the unincorporated business tax.

(2) That an assessment for 1956 was issued on April 20, 1959 (Assessment No. B 590783) assessing unincorporated business tax due in the amount of $813.84 on the basis that the taxpayers' activities reported on their return constitute the carrying on of an unincorporated business, the income of which was subject to the unincorporated business tax.

(3) That both of the taxpayers resided in New York State; [illegible] the taxpayers formed a partnership for the purpose of acting as supervising engineers in the completion of nine construction contracts entered into by Matthew L. Carroll, Inc. at the request of the American Surety Company, the Surety Company which issued performance bonds on the contracts; that the partnership had no office outside of New York State.

(4) That eight of the construction contracts dealt with projects in New York State; that one of the construction contracts was for a project in New Jersey; that the contract of the taxpayers with the Matthew L. Carroll, Inc. provided for the payment of $33,000 for the completion of the nine projects, and did not provide separate amounts for the completion of each of the projects.

(5) That the taxpayers performed no services for any other person or company in addition to their services rendered in completion of the nine construction projects; that upon completion of the said projects the partnership was dissolved.

(6) That both of the taxpayers are graduate engineers; that the taxpayer, George Mittleman, was an active member of the partnership and was not licensed as a professional engineer in the State of New York.

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

DETERMINES:

(1) That the income of the taxpayers as copartners in 1956 from their activities as supervising engineers was not exempt from the unincorporated business tax since all of the members of the

[illegible] failed to comply with Section 7209 of the Education Law by not being licensed as professional engineers in New York State and accordingly were not practicing a profession entitling them to a professional exemption.

(b) That the unincorporated business taxes assessed against the taxpayers for the year 1956 (Assessment No. B 590783) were properly and timely issued; that the said assessment does not include any tax or other charge which could not be lawfully demanded; and that the taxpayers' application for revision or refund be and the same is hereby denied.

DATED: Albany, New York on this 21st day of July, 1967.

STATE TAX COMMISSION

PRESIDENT

COMMISSIONER

COMMISSIONER

COPY

March 1, 1967

Alexander M. Lankler, Esq.
Waterhouse
3526 K. Street, N.W. (Water St.)
Washington, D.C. 20007

COPY

Dear Sandy:

This is in reply to your letter requesting information concerning the taxability for unincorporated business tax purposes of partnerships engaged in the practice of architecture where some of the partners are not architects, do not practice architecture or do not hold themselves out to the public to be engaged in such practice.

In your letter you state that your client is practicing architecture in New York State and has presently eight or nine partners, all of whom are licensed, but that in the past, during years which are still open for the imposition of unincorporated business tax assessments, the firm did have an unlicensed administrative partner and another partner who was a designer.

The State Tax Commission has recently held in two determinations that where a partnership practices architecture or engineering solely in New York State and all the partners are licensed architects or engineers in this State, with the exception of one partner who is an administrative assistant, no unincorporated business taxes could be assessed. The decisions were predicated upon the facts that the unlicensed partner was clearly not practicing architecture or engineering and was not holding himself out to the public as engaged in such practice.

I note, however, that one of the former partners is designated by you as a designer. The facts as stated in your letter are not sufficiently clear as to whether or not the

designer's activities, unlike those of the administrative assistant, can be deemed an aspect of architectural practice, and if not, whether the designer is held out to the public to be one of the architects.

Accordingly, whether or not your client is exempt from unincorporated business taxes for prior years depends upon the specific facts involved.

Sincerely,

JOSEPH H. MURPHY
Commissioner

MS:bdg/ac
APPROVED: EHB

L 8 (1-63)

BUREAU OF LAW

MEMORANDUM

TO: Commissioners Murphy, Macduff and Conlon

FROM: Solomon Sies, Hearing Officer

SUBJECT: DAMES & MOORE (New York Regional Office)

Applications for Revision or Refund of Unincorporated Business Taxes Under Article 16-A of the Tax Law in Effect for the Fiscal Year Ending March 31, 1960 and Article 23 of the Tax Law for the Fiscal Year Ending March 31, 1961.

A hearing with respect to the above matter was held before me at 80 Centre Street, New York, N. Y. on February 23, 1966. The appearances and evidence produced were as shown in the stenographic minutes and the exhibits submitted herewith.

The issue involved herein is whether an engineering partnership, conducting business both within and without the State of New York is entitled to a professional exemption from unincorporated business taxes where all of the partners are not licensed to practice professional engineering in this State.

Dames & Moore, a California partnership, was organized in its present partnership form in 1933. It maintains its general or main office in Los Angeles and has branch or regional offices in 10 major cities in the United States, including the City of New York and in foreign countries. The partnership renders consulting engineering services relating to foundation investigation, engineering design and construction involving the application of earth sciences to the solution of engineering problems. During the years in issue the firm consisted of 2 senior general partners, 11 general partners and 2 corporate general partners. Demad Corporation (Dames spelled backwards) is solely owned by one of the senior general partners, Mr. Dames. Eroom Corporation (Moore spelled backwards) is owned and controlled by the other senior general partner, Mr. Moore. Both of these corporations are investment corporations having no employees or offices. Neither corporation practices engineering nor do either of these corporations have anything to do with the operation of the Regional New York Office of the partnership. The other two partners of the firm who are not engineers are Richard E. McGowan and John W. Maloney. Mr. McGowan is an accountant and has no engineering background. His functions in connection with the partnership are to oversee the accounting procedures and supervise the financial affairs of the firm. Mr. Maloney does have some engineering background

but is not a licensed engineer. His functions in connection with the firm are to engage in long range planning with respect to additional personnel and financial requirements of the firm which may be needed for expanded operations. Neither Mr. McTowan nor Mr. Maloney performs any engineering services nor do they sign any engineering reports or perform any service within this State.

The Regional New York Office of the partnership is located at 100 Church Street, New York City. During the years in issue, the services rendered by the New York Regional Office of the partnership were at all times under the supervision and control of two general partners, John F. Brennan and Gardner L. Reynolds, both of whom performed services on behalf of the firm in the New York office. Mr. Reynolds has a degree in civil engineering from Cornell University. He received his license to practice professional engineering in the State of New York by the New York State Education Department in 1959. Mr. Brennan has a degree in engineering from Columbia University and is licensed to practice professional engineering in the State of New York. The other 9 general partners are all licensed engineers, licensed by the various states in which the partnership maintains regional offices. During the years 1959 through 1961 the New York Regional Office employed approximately 18 or 19 engineers. Some were licensed in the State of New York and some were not. However, the services performed by the unlicensed engineers were always performed under the direct supervision and control of the New York partners who were professional engineers licensed by the Education Department of the State of New York. During the years 1959 through 1961, the letterhead of the firm used by the New York office listed only Mr. Reynolds and Mr. Brennan as the partners in the New York office.

The partnership filed unincorporated business tax returns for fiscal years ending 3/31/60 and 3/31/61 and paid unincorporated business taxes computed thereon. Thereafter it filed applications for refund thereof on the ground of professional exemption. The applications for refund were denied because all of the partners were not licensed to practice professional engineering in this State.

Although the Education Department of the State of New York has raised a question as to whether the partnership firm may engage in the practice of professional engineering in this State where all of the member partners do not hold New York State professional engineering licenses, the Division of Law of the State Education Department wrote the attorney for the taxpayers on October 13, 1964 that there is no particular problem involved in relation to the subject partnership of professional engineers "so long as no practice of engineering is carried on in the State by the persons not licensed in New York State".

The memorandum of Commissioner Edward D. Igoe, dated February 17, 1964, applicable to audit or conference matters pending before the Income Tax Bureau, states that professional status is not to be denied to a partnership consisting of one or more licensed or certified indi-

viduals and one or more unlicensed parties, unless the unlicensed or uncertified individuals are actually held out to the public as being engaged in the practice of the profession. In addition, it further states that professional status is not to be denied to a partnership consisting of both individuals licensed or certified by New York State and parties licensed or certified by another state if the partnership has offices both within and without New York State; that the final decision with respect to unincorporated business tax purposes may be denied if the Education Department refuses to grant the license or to endorse the out of state license or certificate.

I am, therefore, of the opinion that the taxpayers are entitled to an exemption from unincorporated business tax in accordance with the provisions of Section 386, Article 16-A of the Tax Law with respect to the fiscal year ending 3/31/60 and subdivision (c) Section 703, Article 23 of the Tax Law with respect to the fiscal year ending 3/31/61.

For the reasons stated above, I recommend that a determination be made by the Tax Commission in the form submitted herewith.

APR 17 1967

Solomon Sies
Hearing Officer

Martin Schapiro
Approved

Paul Hochman
Approved

STATE OF NEW YORK

STATE TAX COMMISSION

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IN THE MATTER OF THE APPLICATION

OF

DAMES AND MOORE (NEW YORK REGIONAL OFFICE)

FOR REVISION OR REFUND OF UNINCORPORATED BUSINESS TAXES UNDER ARTICLE 16-A OF THE TAX LAW IN EFFECT FOR THE FISCAL YEAR ENDING MARCH 31, 1960 AND ARTICLE 23 OF THE TAX LAW FOR THE FISCAL YEAR ENDING MARCH 31, 1961.

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The above named partnership having filed applications for revision or refund of unincorporated business tax under Article 16-A of the Tax Law in effect for the fiscal year ending March 31, 1960 and Article 23 of the Tax Law for the fiscal year ending March 31, 1961 and a formal 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 23rd day of February, 1966, before Solomon Sies, Hearing Officer of the Department of Taxation and Finance at which hearing Gardner M. Reynolds, one of the general partners appeared and testified and the partnership having been represented by Paul, Weiss, Rifkind, Wharton & Garrison, Esqs., by Allan Blumstein, Esq. and Morris B. Abram, Esq., of Counsel, and the matter having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That Dames & Moore New York Regional Office filed Partnership and Unincorporated Business Tax Returns for the fiscal years ending 3/31/60 and 3/31/61 on July 15, 1960 and July 11, 1961, respectively, and paid unincorporated business taxes in the sums of $3,405.11 for fiscal year ending 3/31/60 and $5,878.05 for fiscal year ending 3/31/61; that on July 16, 1962, the partnership filed applications for refund of the unincorporated business taxes paid for the abovementioned years, claiming exemption therefrom upon the ground that they are engaged in the practice of professional engineering; that the applications for refund were denied because all of

the partners were not licensed to practice professional engineering in the State of New York.

(2) That Dames & Moore, a California partnership, was organized in its present partnership form in 1933; that it maintains its general or main office in Los Angeles, Cal. and has branch or regional offices in 10 major cities in the United States including the City of New York and in foreign countries; that the partnership renders consulting engineering services relating to foundation investigation, engineering design and construction involving the application of earth sciences to the solution of engineering problems; that during the years in issue the partnership firm consisted of 2 senior general partners, 11 general partners and 2 corporate general partners; that the aforementioned corporations were organized under the laws of the State of California and do not conduct any business in this State; that Semad Corporation (Dames spelled backwards) is solely owned by one of the senior general partners, Mr. Dames; that Eroom Corporation (Moore spelled backwards) is owned and controlled by the other senior partner, Mr. Moore; that both of these corporations are investment corporations having no employees or offices; that neither corporation practices engineering nor do either of these corporations have anything to do with the operation of the regional New York office of the partnership; that the other two partners of the firm who are not engineers are Richard E. McGowan and John W. Maloney; that Mr. McGowan is an accountant and has no engineering background; that his functions in connection with the partnership are to oversee the accounting procedures and supervise the financial affairs of the firm; that Mr. Maloney does have some engineering background but is not a licensed engineer; that his functions in connection with the firm are to engage in long range planning with respect to additional personnel and financial requirements of the firm which may be needed for expanded operations; that neither Mr. McGowan nor Mr. Maloney performs any engineering services nor do they sign any engineering reports or perform any services within this state.

(3) That the regional New York office of the partnership is located at 100 Church Street, New York, N. Y.; that the New York office renders consulting engineering services previously described; that during the years in issue, the services rendered by the New York regional office of the partnership were at all times under the direct supervision and control of two general partners, John F. Brennan and Gardner M. Reynolds, both of whom performed services on behalf of the firm in the New York office; that Mr. Reynolds has a degree in civil engineering from Cornell University; that he received his license to practice professional engineering in the State of New York by the New York State Education Department in 1953; that Mr. Brennan has a degree in engineering from Columbia University and is licensed to practice professional engineering in the State of New York; that the other 9 general partners are all licensed engineers, licensed by the various states in which the partnership maintains regional offices; that during the years 1959 through 1961 the New York regional office employed approximately 18 or 19 engineers; that some were licensed in the State of New York and some were not; that, however, the services performed by the unlicensed engineers were always performed under the direct supervision and control of the New York partners who were professional engineers licensed by the Education Department of the State of New York; that during the years 1959 through 1961, the letterhead of the firm used by the New York office listed only Mr. Reynolds and Mr. Brennan as the partners in the New York office.

(4) That the partnership is engaged in the practice of professional engineering; that more than 80% of its income attributable to sources within this State is derived from the personal services actually rendered by the members of the firm licensed as professional engineers in the State of New York and that capital is not a material income producing factor; that the professional activities of the firm within the State of New York are directed solely by the New York partners licensed to practice professional engineering in this State and by no one else; that it does not appear that any member of the partnership firm who is not licensed to practice

professional engineering in this State has engaged in such practice of professional engineering within this State; that the Education Department of the State of New York has ruled that the New York regional office of Dames and Moore is authorized to practice professional engineering in this State so long as no practice of professional engineering is carried on in this State by the members of the partnership not licensed in this State.

Based upon the foregoing findings and all of the evidence presented herein,

The State Tax Commission hereby

DETERMINES:

(A) That the activities of the subject partnership for the fiscal year ending 3/31/60 constituted the practice of professional engineering exempt from unincorporated business tax in accordance with the intent and meaning of Section 386, Article 16-A of the Tax Law; that the activities of the subject partnership for fiscal year 3/31/61 constituted the practice of professional engineering exempt from unincorporated business tax within the intent and meaning of Section 703 (c), Article 23 of the Tax Law.

(B) That, accordingly, the unincorporated business taxes paid by the taxpayer partnership for the fiscal years ending 3/31/60 and 3/31/61 were not lawfully due and owing; that the applications for refund for said years are hereby granted; that there be refunded to the taxpayer partnership the sum of $3,405.11, without interest, for the fiscal year ending 3/31/60 and the sum of $5,878.05, with any interest that may be lawfully due and owing for the fiscal year ending 3/31/61.

AND IT IS SO ORDERED.

DATED, Albany, N. Y. the 22nd day of May 1967.

STATE TAX COMMISSION

President

Commissioner

Commissioner