

*Unincorporated Business Tax
Determinations A-Z
Heisenbracher, Karl W. &
Associates*

**STATE OF NEW YORK
STATE TAX COMMISSION**

IN THE MATTER OF THE PETITION

OF

**KARL W. WEISENBACHER AND
HERBERT SCHNEPP INDIVIDUALLY
AND AS CO-PARTNERS d/b/a
KARL W. WEISENBACHER &
ASSOCIATES**

**FOR REDETERMINATION OF A DEFICIENCY
OR FOR REFUND OF UNINCORPORATED BUSI-
NESS TAXES UNDER ARTICLE 23 OF THE TAX
LAW FOR THE YEAR 1963**

The taxpayers herein 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 year 1963 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 25, 1968, before Solomon Sies, Hearing Officer of the Department of Taxation and Finance, at which hearing the taxpayers were represented by Ferdinand Manner, accountant and auditor and the record having been examined and considered,

The State Tax Commission hereby finds:

(1) That the taxpayers filed a partnership return for the year 1963 in which they reported gross receipts of \$26,942, payment to partners-salaries and interest, \$12,836.07; that they indicated on said return that they were engaged in the business of surveying; that they did not file any unincorporated business tax return for said year on the ground that they claimed that unincorporated business tax was not applicable.

(2) That 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 issued a notice of deficiency therefor upon the ground that the activities of the taxpayers as reported on their partnership return constituted the carrying on of an unincorporated business, the income of which was subject to unincorporated business tax.

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

(4) That in September 1959 Karl W. Weisenbacher was licensed by the New York State Education Department as a land surveyor; that Herbert Schnepf was not licensed by the New York State Department of Education as a land surveyor prior to 1968.

(5) That the unlicensed partner held himself out to the public as engaged in the profession of land surveying.

(6) That in June 1966, the New York State Department of Education directed that the land surveying partnership of Karl W. Weisenbacher & Associates be discontinued on the ground that the partnership was in violation of the provisions of section 7209 of the Education Law which requires every member of a firm, partnership or joint stock association engaged in the practice of land surveying to be a licensed land surveyor; that the land surveying partnership in accordance therewith was discontinued; that Karl W. Weisenbacher continued his individual practice as a licensed land surveyor with Herman Schnopf as his employee.

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 land surveying since it failed to meet the requirements of section 7209 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 was accordingly during the year in issue not entitled to a professional exemption and was during the year in issue, therefore, subject to the unincorporated business tax.

(C) That, accordingly, the statement of audit charges and notice of deficiency imposing unincorporated business tax for the year 1963 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 tax
filed with respect thereto be and the same is hereby denied.

DATED: Albany, New York this 8th day of April , 1969.

STATE TAX COMMISSION

/s/

JOSEPH H. MURPHY

PRESIDENT

/s/

A. BRUCE MANLEY

COMMISSIONER

Milton Koen

COMMISSIONER