

STATE OF NEW YORK
STATE TAX COMMISSION

FILE COPY

Unincorporated Business

23

722

In the Matter of the Petition of :
ERNEST A. BAMMAN :
For Redetermination of a Deficiency or :
for Refund of Unincorporated Business :
Taxes under Article 23 of the Tax Law :
for the Years 1962, 1963 and 1964. :

LAW
DECISION

Mr. Ernest A. Bamman has filed a petition for redetermination of a deficiency or for refund of Unincorporated Business Taxes for the years 1962, 1963 and 1964.

A formal hearing was held in the offices of the State Tax Commission in the City of New York on October 30, 1969 before Lawrence A. Newman, Hearing Officer. The petitioner appeared and testified. The Income Tax Bureau was represented by Edward H. Best, Esq., (Albert J. Rossi, Esq. of Counsel).

FINDINGS OF FACTS:

1. Mr. Ernest A. Bamman, the petitioner, has timely filed New York State Income Tax Resident Returns for the years 1962, 1963 and 1964.

The petitioner did not file Unincorporated Business Tax Returns for the years 1962, 1963 and 1964.

2. On October 17, 1966, the Income Tax Bureau issued a notice of deficiency under file number 26094171 for the years 1962, 1963 and 1964 in the amount of \$749.52 and statutory interest.

The Income Tax Bureau had based this notice of deficiency on its determination that the income derived by the petitioner from his activities as a "Public Utilities Consultant" was subject to the Unincorporated Business Tax.

3. The petition for redetermination of the deficiency or for refund was timely filed.

4. The petitioner was graduated from Cornell University with the degree of Mechanical Engineer in 1926. The petitioner also passed the written examinations for certified public accounting in 1937, but is not licensed or registered in either profession.

5. The petitioner was employed by the Public Service Commission of the State of New York from 1934 to 1961, in progressively higher positions as accountant, rate case analyst, hearing examiner, supervising hearing examiner, and director of the Utilities Division.

6. After his retirement from State Service in 1961, the petitioner was retained periodically by the Public Service Commission, and appeared before regulatory agencies, as a consultant, furnishing analyses and advice on complex and technical subjects relating to regulatory matters, particularly utility rate proceedings.

7. The petitioner's specialized and superior knowledge of the problems and practices of public utility regulation is recognized and appreciated by the members and employees of the Public Service Commission of New York State, by the members and officers of the National Association of Regulatory Commissioners, and by the representatives of regulated utility companies.

8. The petitioner was not engaged in the practice of professional engineering, or in the practice of public accountancy.

DECISION

A. The activities of the petitioner, Mr. Ernest A. Barman, described as "Public Utilities Consultant" do not constitute the practice of a profession within the meaning and intent of Article 23 of the Tax Law.

B. The business activities of the petitioner as a "Public Utilities Consultant" during the years 1962, 1963 and 1964,

constituted the carrying on of an unincorporated business, and the resulting net income was subject to the unincorporated business tax.

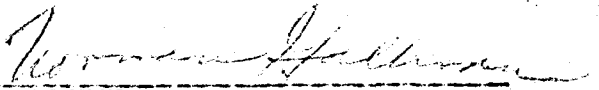
C. The deficiency issued against the petitioner dated October 17, 1966 under file numbered 26094171 for the years 1962, 1963 and 1964 is correct and is sustained.

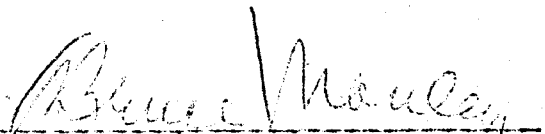
D. Pursuant to Section 684 of the Tax Law, interest shall be added to the total amount due until date of payment.

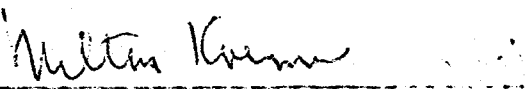
DATED: Albany, New York

March 9, 1970

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER