

STATE OF NEW YORK
STATE TAX COMMISSION

HEARING UNIT - File Copy

EX UBT

PT. 23 SECS. 722

BY WCH/5

In the Matter of the Petition :

of :

PHILIP & LEONARD BERMAN :

For a Redetermination of a Deficiency
or for Refund of Unincorporated Business
Taxes under Article 23 of the Tax Law
for the Fiscal Years ending February 28,
1961 and February 28, 1965 :

LOSS REFS. _____

CASE LAW CITATIONS
DECISION

REMARKS _____

The taxpayers having filed petitions pursuant to Sections 722 and 689 of the Tax Law for a redetermination of a deficiency dated April 13, 1964, for the fiscal year ending February 28, 1961, and a further deficiency dated February 26, 1968, for the fiscal year ending February 28, 1965, each for unincorporated business taxes imposed under Article 23 of the Tax Law and a hearing having been duly held before Nigel G. Wright, Hearing Officer, and the record having been duly examined and considered,

The State Tax Commission hereby

FINDS:

1. The sole issue presented herein is whether the taxpayers are exempt from the unincorporated business tax on the grounds that they are engaged in a profession within the interest of the statute. The computation of the tax otherwise due is conceded to be correct. The penalty asserted for 1965 has not been separately contested.

2. The deficiency for the fiscal year ending February 28, 1961, is for \$873.34 with interest and for the fiscal year ending February 28, 1965 is for \$1389.02 together with interest and a 25% penalty of \$347.26 under Tax Law Section 685(a) for failure to file a return. The deficiency for the fiscal year ending February 28, 1961, has been paid.

3. The taxpayer's enterprise is the investigation, for insurance underwriters, of fire losses in the soft goods field. They are accredited by the loss committee of the New York Board of Fire Underwriters and are on the approved list of probably every major insurance company in New York City. They have no knowledge of any competitors so accredited and approved and can be considered a unique enterprise.

4. Fire loss appraisal involves, among other things, the examination of damaged goods at the scene of a fire and the estimation of inventories from books of account and tax statements.

5. Fire loss appraisal is not the subject of any academic courses or degree programs given in any college or university in the United States. Academic training, even in a variety of schools, would not alone qualify an individual in the appraisal of fire losses of soft goods.

6. Mr. Philip Berman has a Bachelor of Laws degree and is a member of the New York Bar. At one time, he was in business with his father as a tailor. Then, he was a sales agent for a woolen mill. Then, he worked for Mr. David Weinstock, at the time, the only accredited fire loss adjuster in soft goods field, for two or three years until Mr. Weinstock died. He was engaged in his own business of fire loss appraisal for about ten years before he entered into partnership in 1956 with his brother, Leonard Berman.

7. Mr. Leonard Berman has a Bachelor degree in Physics and a Masters degree in Business Administration from Columbia University with a Major in Statistics and a Minor in Accounting. He has been an assistant general manager of ladies wear, a head buyer of mens wear for Montgomery Ward and merchandise manager of mens and boys wear for Federated Department Stores. He has taught merchandising

at the City College of New York and lectured in fire loss appraisal to insurance company personnel.

8. Mr. Leonard Berman testified that all of his experience, including his work experience, has contributed markedly to his proficiency in his work.

Upon the foregoing findings and all the evidence in the case the State Tax Commission

DECIDES:

A. Neither the activity of fire loss appraisal nor the specialty of fire loss appraisal of soft goods is a profession. The taxpayers individually are not professionals.

B. The penalty imposed for the fiscal year 1965 is affirmed as not being contested.

C. The deficiencies as shown in paragraph two are affirmed together with such interest, if any, as may be lawfully due pursuant to Section 684 of the Tax Law.

Dated: Albany, New York

STATE TAX COMMISSION

March 9 1970

Norman Gellman
PRESIDENT

Reuben M. Marder
COMMISSIONER

Milton Kerner
COMMISSIONER