

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

SCOTT-TEXTOR PRODUCTIONS,
A PARTNERSHIP, AND
KEITH TEXTOR, SYLVIA TEXTOR
ALAN SCOTT AND MARILYN SCOTT,
INDIVIDUALLY AND AS CO-PARTNERS,

For a Redetermination of a Deficiency or
for a Refund of Unincorporated Business
Taxes under Article 23 of the Tax Law for
the year 1960.

Keith Textor and Sylvia Textor, his wife, and Alan
Scott and Marilyn Scott, his wife, each a co-partner in
Scott-Textor Productions, a partnership, and Scott-Textor
Productions, the partnership, having filed a petition for
redetermination of a deficiency or for a refund of unincor-
porated business taxes under Article 23 of the Tax Law for
the year 1960, and a hearing having been held at the offices
of the State Tax Commission, 80 Centre Street, New York, New
York, on September 30, 1964 before Vincent P. Molineaux,
Hearing Officer of the Department of Taxation and Finance,
and the petitioners having appeared by Squadron Alter &
Weinrib, Attorneys at Law, of New York, New York, (David
Alter, Esq. of counsel), and Jerome S. Mark, CPA of Beverly
Hills, California, having appeared and testified, and the
matter having been duly examined and considered, the State
Tax Commission hereby finds that:

(1) By a notice of additional assessment, AB 014945,
dated July 25, 1962, the Department of Taxation and Finance
issued a notice of deficiency against Scott-Textor Productions
for failure to pay unincorporated business tax on the income of

reference
file
cc

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Date: 23
T. L. 53 703(a);
703(a)

Key words:
profession.
production of
"commercial"
for TV or
radio
recording
musical
compositions
singing
Class features

Citations
- Sutter
- Murphy
(1960)
"AD 262
Sunderly
Bryant
7 AD 24
15, 17
Barkman
(1952)
279 App. D.
1115

the partnership in the year 1960. Unincorporated business tax at 4% on taxable business income in the amount of \$156,252.40 was assessed to a total tax of \$6,250.10. The addition of a penalty in the amount of \$312.50 and of interest in the amount of \$468.75 gave a total of unincorporated business tax, penalty and interest due in the amount of \$7,031.35, as of July 25, 1962.

(2) The partnership thereafter applied for a review of these additional taxes assessed by an application for revision or refund, sworn to October 22, 1962; and by letter dated October 18, 1962, Executive Business Management Inc., a managing agency for the taxpayer partnership, asserted that the activities engaged in by the partnership constituted the practicing of a profession so as to be exempt from unincorporated business tax. By letter dated November 14, 1962 the Department refused to vacate the assessment, and the petitioners thereafter duly requested a formal hearing.

(3) The partnership was engaged in a service of producing advertising messages in verse which was set to music and sung. These messages, tape-recorded, were to be used as the commercial message of the sponsor, on radio and television programs, and the service was paid for by fees from advertising agencies, sometimes paid to the partnership for the total service, but more commonly to one or more of the partners for their individual or joint contribution in writing the lyrics and the musical score or for performing the vocal renditions. The partnership contracted for the sale of its services with advertising agencies that had the accounts for the television or radio shows into which the recorded commercial messages were to be interpolated. The partnership invariably engaged for the production of the total commercial, and the several partners did not participate in the

recording of any commercial messages, the words or music of which was written by others. All fees were turned over to the partnership, and the partners shared equally in the profits of the partnership.

In this cooperative undertaking, Alan Scott functioned for the most part as the lyricist, writing the verse commercials, Keith Textor mainly composed the musical score and Marilyn Scott and Sylvia Textor sang the advertising verse so set to music.

(4) All of the petitioners had more or less extensive general education and adequate specialized education (where needed) to perform the particular functions they contributed, and they were not ineligible to be accorded professional status (under the unincorporated business tax law) by reason of lack of appropriate education, it is held.

(5) All the partnership's earnings were from fees for personal services, and accordingly it is found that more than eighty per centum of the gross income for the taxable year was derived from personal services actually rendered by the members of the partnership.

(6) Capital was not material as an income producing factor in producing the said income, which was entirely from fees, it is further found.

Upon the foregoing findings and all of the evidence presented herein,

The State Tax Commission hereby

DECIDES:

(A) That neither the partnership nor any of the partners was engaged in the practice of a profession within the meaning of the term in Tax Law Section 703 (c) in that

(1) the efforts of the several partners, although to some degree of a creative or artistic nature, resulted in a work product

consisting of recorded commercial advertising messages for use in sponsored radio or television programs, and the producing of such messages for commercial use is not the practicing of a profession; and in that

(2) the partnership, over and above the creative work or artistic performances contributed by the several partners, was engaged ultimately in producing, promoting and selling its service, and these were business functions proper; and all of the partners participated in such business functions and in the overall supervision and management of the business, and in any case, the petitioners as co-partners are all deemed to have so participated.

(B) That the activities engaged in by the petitioners as partners constituted a business subject to the unincorporated business tax, pursuant to the provisions of Tax Law Section 703 (a) and (c), which provide that an unincorporated business subject to tax includes any business or occupation engaged in by a partnership or other unincorporated entity, except activities that constitute the practice of a profession.

(C) That accordingly the assessment made by notice of additional assessment, AB 014945, dated July 25, 1962, set forth in paragraph 1 hereof, is affirmed in the total amount of \$7,031.35 as of the date thereof, and subject to such additional penalties, interest and additions to the tax as are provided for by law (under Tax Law Section 722).

Dated, Albany, New York

, 1969

State Tax Commission

President

Commissioner

Commissioner