

STATE OF NEW YORK

STATE TAX COMMISSION

HEARING UNIT - File Copy

In the Matter of the Petition
of
W. C. Gilman, R. G. Smith, and G. L.
Augustus, individually, and as co-
partners, d/b/u the firm name and style
of

W. C. GILMAN AND COMPANY

For a Redetermination of a Deficiency
or for Refund of Unincorporated Business
Taxes for the years 1961, 1962 and 1963

TAX UBT
ART. 23 SECS. 722
KEY WORDS
CROSS INDEX
DECISION
CASE LAW CITATIONS
REMARKS

The taxpayer having filed a petition pursuant to Sections 722 and 689 of the Tax Law for a redetermination of deficiencies asserted under date of April 13, 1965, in unincorporated business taxes due under Article 23 of the Tax Law for the years 1961, 1962 and 1963; 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 herein is whether a partnership wherein some, but not all, partners are licensed, professional engineers is exempt from the unincorporated business tax by reason of Section 703(c) of the Tax Law.

2. The asserted deficiencies are in the amounts of \$3142.20 for 1961, \$1197.66 for 1962, and \$984.74 for 1963, all amounts with interest. It is conceded that the 1962 deficiency is overstated, due to an arithmetical error, by \$200; and it is hereby found to be \$997.66 with interest.

3. The taxpayer firm acts as consultants with respect to public utilities. It provides studies and cost estimates for the construc-

tion of transit systems, pipelines and electrical plants, and gives appraisals of properties for purposes of both regulation of rates and the feasibility of construction.

4. The partnership certificate states that the partnership is formed for the practice of engineering.

5. Two partners, Mr. Gilman and Mr. Smith, were licensed, professional engineers in the State of New York.

6. The third partner, Mr. Augustus, was an accountant licensed in the State of Illinois and attorney admitted to practice in the District of Columbia. Mr. Augustus never held himself out as either an accountant or attorney in New York State.

7. The letterhead of the firm gives simply its name and address and does not contain any language descriptive of its business nor a list of its partners. The telephone listing of the firm describes the firm as "consulting engineers".

8. The firm never specifically identified or specifically held out Mr. Augustus as an engineer.

9. Mr. Augustus was a general partner and was held out to the public as such. His power to bind the firm on all decisions, including engineering decisions, was in no way limited.

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

DECIDES:


A. A partnership composed of some licensed engineers and some unlicensed persons cannot legally practice engineering in New York State, and a licensed engineer cannot legally be a member of such a partnership (Matter of Losi v. Allen 25 AD 2d 474). It would be a contravention of the public policy of the State to extend the exemption from unincorporated business tax provided for professionals to an illegal partnership.

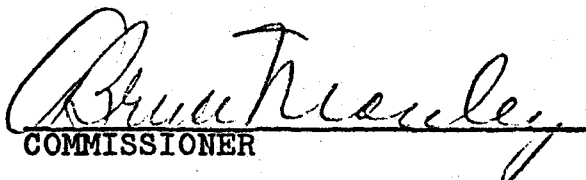
B. To the extent that the activities of taxpayer were legal, they did not constitute the practice of the profession of engineering or of any other profession.


C. The deficiencies are affirmed as stated and corrected in paragraph 2 together with such interest, if any, as may be due pursuant to Section 684 of the Tax Law.

DATED: Albany, New York
May 25, 1970

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER