

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
PALETTE DESIGNS	:	DECISION
for Redetermination of Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law	:	
for the Year 1966.	:	

Petitioner, Palette Designs, has filed a petition for redetermination of deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the year 1966. (File No. 3463). A formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York, on June 21, 1972, at 1:15 P.M. Petitioner appeared by Alvin Arons, C.P.A. The Income Tax Bureau appeared by Saul Heckelman, Esq., (Albert J. Rossi, Esq., of Counsel).

ISSUE

Did the business activities of petitioner, Palette Designs, during the year 1966 constitute the practice of a profession?

FINDINGS OF FACT

1. Petitioner, Palette Designs, filed a New York State income and unincorporated business tax partnership return for the year 1966. It stated on said return that its net income for said year was not subject to the unincorporated business tax.

2. On February 19, 1968, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Palette Designs, imposing unincorporated business tax in the sum of \$922.76 upon the income received by it from its business activities during the year 1966 and accordingly issued a Notice of Deficiency in the sum of \$969.50.

3. Petitioner, Palette Designs, was a partnership formed by Erich R. Sinner, Fio Mandrogona, and Robert Jackenthal in 1965. They all actively participated in the business affairs of the partnership during the year 1966.

4. Erich R. Sinner was a graduate of Pratt Institute with a Bachelor of Science degree in the field of interior designing. He was a consultant to the Garden State Parkway Authority on the use of colors in traffic safety. He worked on the design of the interior of the General Motors building in Newark, New Jersey. He created display designs for leading New York department stores. He was a member of the National Society of Interior Designers.

5. Fio Mandrogona was a graduate of the Professional School of Industrial Arts with a degree in the field of industrial and architectural design. He specialized in the design problems peculiar to the field of vinyl. He was a member of the National Society of Interior Designers.

6. Robert Jackenthal did not have any formal education beyond high school. He did not attend college. He did not have a degree in industrial design. He has written an article on the usage of wallpaper in industrial design in a trade publication known as "Wallpaper & Wallcoverings". He did not become a "professional member" of the National Society of Interior Designers until August 1, 1968. He had six years of practical experience in the interior design field prior to becoming a partner of petitioner, Palette Designs.

7. The business activities of petitioner, Palette Designs, during the year 1966 consisted of designing and consulting on the design of patterns for industrial and commercial use. This included designs for fabrics, wallpaper, automotive interiors, flooring, wallboards and displays. It also consulted with industrial and commercial businesses on the proper use of color and design for various types of products. This included analysis of technical problems connected with the printing of colors or designs on fabrics.

8. During the year 1966, more than 80% of petitioner, Palette Designs, business income was derived from personal services rendered by its partners. Capital was not a material income producing factor.

CONCLUSIONS OF LAW

A. That a partnership engaged in practice of a profession is subject to the unincorporated business tax if any one of its partners does not qualify as a professional. Therefore, even if it is assumed that petitioner, Palette Designs, was engaged in the practice of the profession of industrial design, it is not entitled to a professional exemption under section 703(c) of the Tax Law since Robert Jackenthal, an active partner of the firm, did not qualify as a professional industrial designer in accordance with the meaning and intent of NYCRR 281.4Q.39(c).

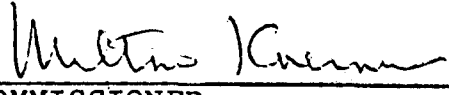
B. That the petition of Palette Designs is denied and the Notice of Deficiency issued February 19, 1968, is sustained.

DATED: Albany, New York
January 16, 1973

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