



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A

STATE CAMPUS

ALBANY, N. Y. 12227

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION

Mario A. Procaccino
~~XXXXXXXXXX~~, PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

STATE TAX COMMISSION

HEARING UNIT

EDWARD ROOK

SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

Dated: Albany, New York

May 8, 1974

Mr. Robert Brownjohn
c/o Brownjohn & Chermayeff
59 East 54th Street
New York, New York

Dear Mr. Brownjohn:

Please take notice of the **DETERMINATION** of
the State Tax Commission enclosed herewith.

Please take further notice that pursuant to **section 386j** of
the Tax Law any proceeding in court to review an adverse decision
must be commenced within **90 Days** after
the date of this notice.

Any inquiries concerning the computation of tax due or refund allowed
in accordance with this decision or concerning any other matter relat-
ing hereto may be addressed to the undersigned. These will be referred
to the proper party for reply.

Very truly yours,

L. Robert Leisner
HEARING OFFICER

cc Petitioner's Representative
Law Bureau

STATE OF NEW YORK
Department of Taxation and Finance

STATE CAMPUS

ALBANY, N. Y. 12227

Mr. Robert Brownjohn
c/o Brownjohn & Chermayeff
59 East 54th Street
New York, New York



F.D.R. STATION

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application :

of :

ROBERT BROWNJOHN and IVAN CHERMAYEFF :
Individually and as copartners d/b/u :
the firm name and style of: :

BROWNJOHN & CHERMAYEFF :

for Revision or Refund of Unincorporated :
Business Taxes under Article 16-A of the :
Tax Law for the Period May 1, 1957 to :
August 1, 1957. :

In the Matter of the Application :

of :

IVAN CHERMAYEFF and THOMAS GEISMAR :
Individually and as copartners d/b/u :
The firm name and style of: :

DETERMINATION

CHERMAYEFF & GEISMAR ASSOCIATES :

for Revision or Refund of Unincorporated :
Business Taxes under Article 16-A of the :
Tax Law for the Period July 1, 1960 to :
December 31, 1960. :

In the Matter of the Application :

of :

ROBERT BROWNJOHN, IVAN CHERMAYEFF :
and THOMAS GEISMAR, Individually :
and as copartners d/b/s the firm :
name and style of: :

BROWNJOHN, CHERMAYEFF & GEISMAR :

for Revision or Refund of Unincorporated :
Business Taxes under Article 16-A of the :
Tax Law for the Years 1957 (Period August 1, :
1957 to December 31, 1957) and 1959. :

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application

of

ROBERT BROWN and IVAN CHAMBERLAIN
Individually and as copartners of
the firm name and style of

BROWN & CHAMBERLAIN

for Revision or Refund of Unincorporated
Business Taxes under Article 15-A of the
Tax Law for the period July 1, 1951 to
August 1, 1951.

In the Matter of the Application

of

IVAN CHAMBERLAIN and THOMAS GILFILLAN
Individually and as copartners of
the firm name and style of

CHAMBERLAIN

CHAMBERLAIN & GILFILLAN

for Revision or Refund of Unincorporated
Business Taxes under Article 15-A of the
Tax Law for the period July 1, 1951 to
December 31, 1951.

In the Matter of the Application

of

ROBERT BROWN, IVAN CHAMBERLAIN
and THOMAS GILFILLAN, Individually
and as copartners of the firm
name and style of

BROWN, CHAMBERLAIN & GILFILLAN

for Revision or Refund of Unincorporated
Business Taxes under Article 15-A of the
Tax Law for the years 1951 (period January 1,
1951 to December 31, 1951) and 1952.

Applicants, Brownjohn and Chermayeff, Chermayeff and Geismar Associates, and Brownjohn, Chermayeff and Geismar, applied for a redetermination of deficiencies in unincorporated business taxes under Article 16-A of the Tax Law for the period May 1, 1957 to August 1, 1957, July 1, 1960 to December 31, 1960, August 1, 1957 to December 31, 1957, and for the year 1959.

A formal hearing was held at the offices of the State Tax Commission, 80 Centre Street, New York, New York, on October 14, 1964, and continued on February 2, 1965, before Solomon Sies, Esq., Hearing Officer. The taxpayers were represented by Arthur M. Dubow, Esq.

ISSUE

Were the three partnerships practicing a profession and therefore exempt from paying unincorporated business pursuant to Article 16-A, section 386 of the Tax Law?

FINDINGS OF FACT

1. Applicants, Brownjohn and Chermayeff, Chermayeff and Geismar Associates, and Brownjohn, Chermayeff and Geismar timely filed New York State unincorporated business tax returns for the periods May 1, 1957 to August 1, 1957, July 1, 1960 to December 31, 1960, August 1, 1957 to December 31, 1957, and for the year 1959.

2. A Notice of Additional Assessment in unincorporated business taxes for the periods May 1, 1957 to August 1, 1957, July 1, 1960 to December 31, 1960, August 1, 1957 to December 31, 1957, and for the year 1959 was issued on December 7, 1961, and March 20, 1962, against the taxpayers under File No. B992042.

Applicants, Brownjohn and Chernysky, Chernysky and Gelman

Associates, and Brownjohn, Chernysky and Gelman, applied for a
reformation of delinquency in unincorporated business taxes
under Article 15-A of the Tax Law for the period May 1, 1957 to
August 1, 1957, July 1, 1958 to December 31, 1958, August 1, 1957
to December 31, 1957, and for the year 1959.

A formal hearing was held at the office of the State Tax
Commission, 80 Centre Street, New York, New York, on October 14,
1959, and continued on January 7, 1960, before Colonel Stas, Esq.,
Hearing Officer. The taxpayers were represented by Arthur M.

Dubow, Esq.

ISSUE

Were the taxes partnership taxes or a profession and
therefore exempt from paying unincorporated business taxes pursuant to

Article 15-A, section 586 of the Tax Law

FINDINGS OF FACT

1. Applicants, Brownjohn and Chernysky, Chernysky and
Gelman Associates, and Brownjohn, Chernysky and Gelman timely
filed New York State unincorporated business tax returns for the
periods May 1, 1957 to August 1, 1957, July 1, 1958 to December 31,
1958, August 1, 1957 to December 31, 1957, and for the year 1959.

2. A notice of Additional Assessment in unincorporated
business taxes for the periods May 1, 1957 to August 1, 1957,
July 1, 1958 to December 31, 1958, August 1, 1957 to December 31,
1957, and for the year 1959 was issued on December 7, 1961, and
No. 20, 1962, against the taxpayers under File No. 893802.

3. The taxpayers applied for redetermination of the deficiencies.

4. More than eighty percent of the gross income of the partnerships was derived from the personal services actually rendered by the members of the partnership and capital was not a material income producing factor.

5. The taxpayers were educated in the field of design at various schools including Harvard University, Yale School of Fine Arts, the Institute of Design of the Illinois Institute of Technology, Brown University and the Rhode Island School of Design.

6. The Industrial Designers Society of America has defined industrial design as an ability to deal with all the physical aspects and properties of a company whereby public goodwill is influenced visually, including the design of trademarks, packaging, interiors of offices and administration buildings, company signs and trucks, public exhibits and even stationery, office forms and uniforms of employees.

7. Taxpayers, Chermayeff and Geismar (Brownjohn has been living in England since 1960) were both senior members of the Industrial Designers Society of America in 1965. A senior member is a classification requiring ten years of practice in the profession of industrial design. The society therefore recognized taxpayers, Chermayeff and Geismar, as having been industrial designers for at least the ten years up until 1965.

1. The designers applied for membership of the

and received.

2. More than a half percent of the gross income of the

partnership was derived from the personal services actually

rendered by the members of the partnership and capital was not

a material income producing factor.

3. The designers were educated in the field of design

at various schools including Harvard University, Yale School

of Fine Arts, the Institute of Design of the Illinois Institute

of Technology, Brown University and the Rhode Island School of

Design.

4. The Industrial Designers Society of America has defined

industrial design as an ability to deal with all the physical

aspects and properties of a product whereby product development

influenced, namely, including the design of a product, packaging,

interiors of offices and administration buildings, company signs

and trucks, public buildings and even automobiles, office furniture and

uniforms of employees.

5. Raymond, Chermayeff and Gelman ("Raymond has been

living in England since 1960) were both senior members of the

Industrial Designers Society of America in 1967. A senior member

is a classification requiring ten years of practice in the profes-

sion of industrial design. The society therefore recognized Ray-

mond, Chermayeff and Gelman, as having been industrial designers

for at least the ten years up until 1967.

8. The taxpayers' work for the periods in question included the design of corporate symbols, architectural lettering, exhibit design, design of uniforms, design of products (i.e. a new aerosol can top) and many other examples of industrial design included within the above definition of the Industrial Designers Society of America.

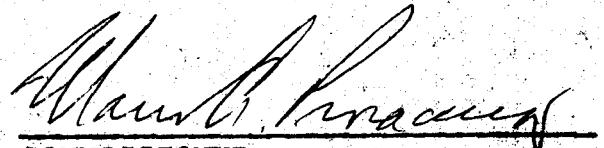
CONCLUSIONS OF LAW

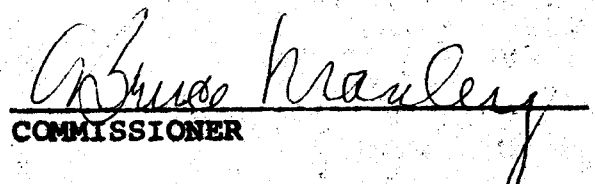
A. We hold that the taxpayers are engaged in the practice of the profession of industrial design. Teague v. Graves, et al., 261 App. Div. 652, 287 N.Y. 549. The taxpayers met well defined criteria for this profession and the profession of industrial design has been held to be exempt from the unincorporated business tax in Teague v. Graves.

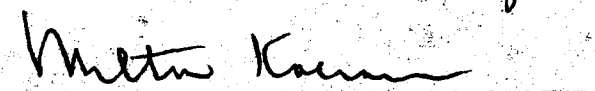
B. The taxpayers' petition is sustained. It is determined that there are no additional assessments or deficiencies in unincorporated business tax against the taxpayers for the periods in question.

DATED: Albany, New York
May 8, 1974

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER

2. The taxpayers' work for the periods in question failed to show the design of corporate symbols, architectural, landscape, garden, design of uniforms, design of products, etc. A new corporate design (and many other symbols of industrial design included within the scope definition of the Industrial Designers Society of America.

CONCLUSION OF LAW

A. We hold that the taxpayers are engaged in the practice of the profession of industrial design. Section 1361(a)(1) of the Internal Revenue Code, 26 U.S.C. § 1361(a)(1), and Regs. 1.1361-1 and 1.1361-2 are well defined.

Criteria for this profession and the profession of industrial design has been held to be a separate line of incorporated business. See Rev. Rul. 79-134.

B. The taxpayers' position is reversed. It is determined that there are no substantial differences or distinctions in their incorporated business and design of the taxpayers for the periods in question.

INDUSTRIAL DESIGN TAX CONCLUSION

DATED: April 1, 1979

CONCLUSION

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