

STATE TAX COMMISSION

Mario A. Procaccino

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 HEARING UNIT

> EDWARD ROOK SECRETARY TO COMMISSION

ADDRESS YOUR REPLY TO

A. BRUCE MANLEY
MILTON KOERNER

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 relating hereto may be addressed to the undersigned. These will be referred to the proper party for reply.

Very truly yours,

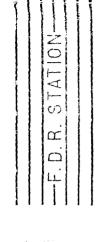
L. Robert Leisner
HEARING OFFICER

cc Petitioner's Representative Law Bureau

Department of Taxation and Finance STATE OF NEW YORK AD 32 (6-73) 250M

ALBANY, N. Y. 12227 STATE CAMPUS

Mr. Robert Brownjohn c/o Brownjohn & Chermayeff 59 East 51th Street New York, New York





STATE OF NEW YORK

STATE TAX COMMISSION

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for Revision as Adiund of Unideorphic the Subiness Faxes under Air all 15-A of the 23% Law for a feer left (Ported Adduct), 1957 to Decuminar -31, 1857, and 1959. 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, Eeg.,

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, Prophy and Chemavell, Univaryell and Geleman Associates, and Brownjohn, Chermayell and Weleman, applied for a radetermination of delicionoles in unincurporated business taxes couler Article 15-A of the Pax Law for the period May I, 1957 to August 1, 1937, July 1, 1960 to December 51, 1950, August 1, 1957, Outy 1, 1960 to the year 1959.

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- 2. A Worden of Additional Assessment in unincorporated auginess taxes teams to the mariods may 1, 1957 to August 1, 1957.

 July 1, 1960 to December 31, 1960, August 1, 1967 to December 31, 1967, and for the year 1952 was taxed on December 7, 1861, and was all 20, 1862, bear 1952 was taxed on December 7, 1861, and was all 20, 1862, bear the caxes under File No. 8922042;

- 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.

A. More than a chty percent of the quose income of the partnerships was certical from the personal certiced softently red by the readons of the partnership and regital way not a metastal shoose producing factor.

i. The texpayors were educated in the field of degler at Various Schools including Survers University, Inla Schools of Finn Arts; the Institute of Design of the Illinois Institute of Pethnology, Ecop University and the Ehelo (sland School of Design,

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I. Taxoneces, Charasyeff and Geimar ("comploin hed been divined in England since 1950) were both senior members of the divine in England since 1950 were both senior member is a classification requiring ten years of practice in the profestion of industrial design. The society therefore recognized tentral design. The society therefore recognized tentral designs of the industrial designs of the industrial designs.

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

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