

STATE OF NEW YORK

STATE TAX COMMISSION

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| In the Matter of the Petition            | : |          |
| of                                       | : |          |
| Clinton S. Lutkins,                      | : |          |
| William Barrett Brown, et al.            | : |          |
| d/b/a                                    | : | DECISION |
| R.W. PRESSPRICH & CO.                    | : |          |
| for a Redetermination of a Deficiency or | : |          |
| for Refund of Unincorporated Business    | : |          |
| Tax under Article 23 of the Tax Law for  | : |          |
| the Years 1964 through 1967.             | : |          |

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Clinton S. Lutkins, William Barrett Brown, et al., d/b/a R.W. Pressprich & Co., 80 Pine Street, New York, New York 10005, filed a petition for the redetermination of a deficiency in unincorporated business tax under Article 23 of the Tax Law for the years 1964 through 1967.

Said deficiency was asserted by notice issued March 29, 1971, under valid consents finding the period of limitations under File No. P/S 3628 and is in the amount of \$80,284.71, plus interest of \$17,641.62 for a total of \$97,926.33. This is made up of \$2,408.96 for 1964, \$3,495.19 for 1965, \$42,568.38 for 1966, and \$31,812.18 for 1967 plus interest. The petition herein relates however only to the amount of \$30,099.89 plus interest for 1966 and \$22,433.32 plus interest for 1967.

A hearing was duly held on November 20, 1974, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, before Nigel G. Wright, Hearing Officer. The petitioners were represented by Jack Wong, C.P.A. of Oppenheim, Appel, Dixon & Co. The Income Tax Bureau was represented by Saul Heckelman, Esq., appearing by Alexander Weiss, Esq., of counsel.

The record of said hearing has been duly examined and considered.

#### ISSUE

The issue in this case is whether certain salaries received by individuals, who were partners in the petitioner firm, should be included in the income of the petitioner.

#### FINDINGS OF FACT

1. R.W. Pressprich & Co. is a general partnership organized in 1909 with its principle office at 80 Pine Street, New York City. At its inception, it was primarily a bond house. It is now engaged in business as a securities broker and dealer and is a member firm of the New York and American stock exchanges and a member of the National Association of Security Dealers. This partnership was incorporated on March 1, 1968, after the years here in question but continued to do substantially the same kind of business as before.

2. The partnership's income was earned from commissions on securities handled as a broker for customers trading profit on

securities purchased and sold by itself the trading profit on new issues which it distributed as part of a syndicate investment advisory fees from individuals, interest from customer accounts and interest and dividends on its own holdings.

3. The proportionate interest of each partner in the partnership ranged from .9% to 10.9%.

4. In October, 1963, a corporation was formed and named R.W. Pressprich & Co., Inc. This remained dormant until January, 1966, when it commenced business at 80 Pine Street, New York City, in space adjacent to the space of the partnership. The stock of this corporation was wholly owned by a corporation acting as a holding company and which in turn was owned by the partnership, R.W. Pressprich & Co. On March 1, 1968, after the years here in question, this corporation changed its name to the Pressprich Corporation but has continued doing the same business as before.

5a. The corporation received its income from five activities, each of which was organized into a separate department: advisory fees from municipalities for consultation on the types of securities; fees to issue for the private placement of securities of corporations to institutional investors; advisory fees from railroads as a consultant and expert witness with respect to mergers and financing; advisory fees with respect to mortgages and other forms of real estate finance and advisory fees from corporations with respect to mergers or financing.

5b. These activities had been engaged in, <sup>for a while</sup> partnership only insignificantly prior to 1966. They had only become important in the securities business in the 1950's and had steadily grown in importance since then.

6. The deficiency in issue attributes to the partnership salaries received by the individual partners of \$752,497.13 in 1966 and of \$560,832.96 in 1967.

7. The salaries ranged from \$25,000.00 to \$40,000.00 in 1966 and from \$10,000.00 to \$55,000.00 in 1967. Each partner received a salary except one who was a full time floor broker with the New York Stock Exchange. The total salaries paid to all partners were about one-half of the total distributive shares of all partners in 1966 and were about one-third in 1967.

8. The salaries bear no obvious relation to the proportionate partnership interests.

9. The salaries paid to partners by the corporation were subject to withholding taxes and each recipient was covered for unemployment insurance.

10. The services performed as corporate offices are in some individual cases similar to services to which the individual is assigned in the partnership in respect to the knowledge of a specialized area, contacts with sources of business and so forth.

11. The partnership is subject to the supervision of the

Securities and Exchange Commission and the stock exchanges. The corporation and its activities is subject to no regulatory authorities.

12. One purpose of forming the corporation was to maintain a segregation of regulated from unregulated activities. Another purpose was to provide an organizational structure to focus the activities of the participants in the most profitable areas of the security business.

13. The partnership even in respect to syndications did not normally handle the securities with which the corporation was involved.

14. The corporation and the partnership maintained separate letterheads and telephone numbers. They maintained separate books and records. They have substantially different employees and have separate payrolls and payroll tax returns. They have separate offices and separate occupancy tax returns. They have separate bank accounts and insurance coverage.

#### CONCLUSIONS OF LAW

The petitioner is not subject to tax on the salaries in question (see Petition of F. Eberstadt and Co., S.T.C. July 23, 1974; CCH New York State Tax Reporter ¶99-954).

The deficiency is erroneous in part. The amounts due for 1964 and 1965 remain respectively \$2,408.96 plus interest of

\$860.72 and \$3,495.10 plus interest of \$1,039.12. The amounts due for 1966 are recomputed to be \$12,468.50 plus interest to the date of the deficiency of \$2,958.78 and for 1967 to be \$10,667.29 plus interest to the date of the deficiency of \$1,891.31.

Said sum is due with such further interest as shall be computed under section 684 of the Tax Law.

DATED: Albany, New York  
February 28, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER