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PHOTO MICROGRAPHICS INC.

Income Tax Determin. A-Z
York, Herman H.

see also:
Unincorp. Bus. Tax Determin. A-Z
Matter, Rudolph A. et al
(4/11/68 - 5/28/68

STATE OF NEW YORK

STATE TAX COMMISSION

IN THE MATTER OF THE APPLICATIONS

OF

HERMAN H. YORK

FOR REVISION OR REFUND OF PERSONAL INCOME TAXES UNDER ARTICLE 16 OF THE TAX LAW FOR THE YEARS 1951, 1952 AND 1953 AND UNINCORPORATED BUSINESS TAXES UNDER ARTICLE 16-A OF THE TAX LAW FOR THE YEARS 1950, 1951, 1952 AND 1953

The taxpayer herein having filed applications for revision or refund of personal income taxes under Article 16 of the Tax Law for the years 1951, 1952 and 1953 and unincorporated business taxes under Article 16-A of the Tax Law for the years 1950, 1951, 1952 and 1953, and hearings having been held in connection therewith at the office of the State Tax Commission at 80 Centre Street, New York, New York on February 8, 1967 and January 23, 1968 before Francis V. Dow, Hearing Officer of the Department of Taxation and Finance, at which hearings the taxpayer appeared and testified and was represented and the record having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That the taxpayer filed resident income tax returns for the years 1950, 1951, 1952 and 1953; that the taxpayer did not file unincorporated business tax returns for the years 1950, 1951, 1952 and 1953.

(2) That an assessment was issued for the year 1950 (Assessment No. FA 73526) on February 8, 1958 assessing unincorporated business tax, penalty and interest due in the amount of

$366.50 on the basis that no unincorporated business tax return was filed and that the taxpayer's income from the sale of pre-designed one-family resident building plans was subject to the unincorporated business tax.

(3) That an assessment was issued for the year 1951 (Assessment No. PA 73527) on February 6, 1958 assessing unincorporated business tax due in the amount of $298.45, additional normal tax in the amount of $236.72 and penalty and interest in the amount of $119.38 which totaled $654.55 on the basis that no unincorporated business tax returns were filed and that travel and entertainment expenses were disallowed as unsubstantiated; that as a result of partnership audits the taxpayer's income was increased and that the taxpayer's income attributable to the sale of building plans was subject to the unincorporated business tax.

(4) That an assessment was issued for the year 1952 (Assessment No. BPA 73528) on February 6, 1958 assessing unincorporated business tax due in the amount of $246.11, additional normal tax in the amount of $102.85 and penalty and interest in the amount of $83.68 totaling $432.64 on the basis that no unincorporated business tax return was filed, travel and entertainment expenses were disallowed as unsubstantiated and that as a result of partnership audits the taxpayer's income was increased and that the taxpayer's income attributable to the sale of building plans was subject to the unincorporated business tax.

(5) That an assessment was issued for the year 1953 (Assessment No. BPA 73529) on February 6, 1958 assessing additional normal tax due in the amount of $65.05, unincorporated business tax of $216.40 and penalty and interest in the amount of $60.59 totaling $342.04 on the basis that no unincorporated business tax return was

filed, travel and entertainment expenses were disallowed as unsubstantiated and that as a result of partnership audits the taxpayer's income was increased and that taxpayer's income attributable to the sale of building plans was subject to the unincorporated business tax.

(6) That the taxpayer did not contest the disallowance of travel and entertainment expenses and submitted no evidence to substantiate them; that the taxpayer did not contest the increase in his income as a result of partnership audits.

(7) That the taxpayer is a licensed architect; that he prepared plans and specifications for one-family residences, copies of which he furnished to persons who ordered them by a number assigned to the plans or by a description of the houses; that the taxpayer did no custom designing of houses; that no services were provided the persons who ordered the plans and specifications; that the plans were ordered by mail or by appearing personally at the taxpayer's office; that charges were made for the plans which ranged from $35 to $45 for four sets; that ordinarily the taxpayer had no personal contact with the purchasers of the plans.

(8) That the orders for the stock plans were obtained as a result of publicity received in newspapers and magazines; that the taxpayer alleged that he did no advertising and as a licensed architect was prohibited from doing so in connection with the practice of his profession; that the taxpayer listed expenses in earning his income for money paid to publishers in 1950 in the amount of $30,438.25 and in 1951 in the amount of $7,308.86. In 1952, he claimed expenses of $11,010.80 for publication publicity and in 1953, $648.38 advertising and publicity.

(9) That the taxpayer affixed his seal as an architect

on the stock plans which he sold claiming that he became responsible for malpractice; that the taxpayer was unable to explain in what manner he was subject to any liability in connection with the sale of such stock plans.

Based upon the foregoing findings and all the evidence presented herein, the State Tax Commission hereby

DETERMINES:

(A) That the sale of plans and specifications as set forth in finding (7) constitutes the carrying on of an unincorporated business, the income of which is subject to the unincorporated business tax, since such activities do not constitute the practice of a profession within the intent and meaning of section 386 of the Tax Law.

(B) That the assessments for additional taxes for the years 1950, 1951, 1952 and 1953 (Assessment Nos. FA 73526, FA 73527, BFA 73528 and BFA 73529) are correct and lawfully due and owing together with interest and other charges and do not include any other taxes or charges which are not lawfully due and owing; that the taxpayer's applications with respect to the years 1950, 1951, 1952 and 1953 be and the same are hereby denied.

Dated: Albany, New York this 28th day of May, 1958.

STATE TAX COMMISSION

/s/ JOSEPH H. MURPHY
PRESIDENT

/s/ A. BRUCE MANLEY
COMMISSIONER

/s/ SAMUEL E. LEPLER
COMMISSIONER