

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

JOHN T. AND ARTEMIS P. KITOS

DECISION

for Redetermination of a Deficiency or for
Refund of Unincorporated Business Tax under
Article 23 of the Tax Law for the Years 1971
through 1973 and 1976 through 1979.

Petitioners, John T. and Artemis P. Kitos, 204 Erregger Road, Syracuse,
New York 13224, filed a petition for redetermination of a deficiency or for
refund of unincorporated business tax under Article 23 of the Tax Law for the
years 1971 through 1973 and 1976 through 1979 (File Nos. 37728 and 37887).

A formal hearing was held before Arthur Bray, Hearing Officer, at the
offices of the State Tax Commission, 333 East Washington Street, Syracuse, New
York, on April 3, 1985 at 1:15 P.M. Petitioners appeared by James G. DiStefano,
Esq. The Audit Division appeared by John P. Dugan, Esq. (James Della Porta,
Esq., of counsel).

ISSUE

Whether the activities engaged in by petitioner John T. Kitos, as a real
estate appraiser, constituted the practice of a profession the income from
which was not subject to unincorporated business tax.

FINDINGS OF FACT

1. Petitioner John T. Kitos filed timely claims for credit or refund of
personal income tax and/or unincorporated business income tax as follows:

<u>Date Filed</u>	<u>Year</u>	<u>Amount</u>
November 1, 1981	1971	\$ 709.87
November 1, 1981	1972	1,392.72
November 1, 1981	1973	2,166.41
November 27, 1981	1976	3,073.88
November 27, 1981	1977	2,830.93
November 27, 1981	1978	1,593.62
November 27, 1981	1979	154.66

The claims for credit or refund were premised upon Mr. Kitos' position that the income from his activities as a real estate appraiser were not subject to unincorporated business tax.

2. Each of the claims for credit or refund were denied on the basis that Mr. Kitos' activities as a real estate appraiser did not constitute the practice of a profession within the meaning of Tax Law §703(c).

3. With the exception of specialty appraisers, in order to perform real estate appraisal services on a contractual basis for the New York State Department of Transportation or other state agencies, one must pass the real estate appraisal examination given by the New York State Department of Transportation. Requirements for taking the examination include substantial experience in real estate and appraising, in addition to a high school diploma. The list of those passing the examination is used by the Department of Transportation and other New York State agencies which retain the services of a real estate appraiser. The list of those passing the examination is also used to select appraisers to give testimony in proceedings before the Court of Claims.

4. Mr. Kitos has been on a list of those appraisers qualified to perform services for New York State agencies and the Court of Claims since 1965.

5. Mr. Kitos has been a real estate appraiser since approximately 1962. During this period, he has been qualified as an expert witness and has presented

testimony and appraisals in a number of courts and tribunals, including the Supreme Court of the State of New York and the New York State Court of Claims. Mr. Kitos received compensation from New York State or its subdivisions for his appraisals and courtroom testimony. These activities have accounted for almost all of Mr. Kitos' income during the periods in issue.

6. The preparation of an appraisal for use by a court requires a detailed knowledge of the methods of valuation, including the "cost method", "market data approach", and the "income approach". Each approach requires an analysis of a different set of very detailed data involving a comparison of the subject property and information concerning comparable properties. On the basis of these analyses, the appraiser establishes an opinion as to the value of the subject property based upon the properties' highest use.

7. When Mr. Kitos was engaged by the Department of Transportation to prepare an appraisal, he would deal with attorneys associated with the Department of Law of the Attorney General's office.

8. Mr. Kitos has been awarded a Doctor of Philosophy degree in the field of public law and public administration from the Maxwell School of Citizenship and Public Affairs of Syracuse University. He has also passed Appraisal Course Number 1 which was sponsored by the American Institute of Real Estate Appraisers and given at the University of Connecticut.

9. Most of Mr. Kitos' knowledge of appraising was derived from self-study and on-the-job experience. This is because an organized body of knowledge was not available for study in the late 1950's and early 1960's, when Mr. Kitos began his study of appraising real estate. Therefore, if one wished to become an expert, one had to study on his own and take the one available course noted

in Finding of Fact "8"

10. The American Institute of Real Estate Appraisers has established a code of ethics for appraisers.

11. Mr. Kitos does not carry malpractice insurance.

CONCLUSIONS OF LAW

A. That during the years at issue herein, section 701(a) of the Tax Law imposed a tax upon the unincorporated business taxable income of every unincorporated business wholly or partly carried on within New York State. Section 703(c) of the Tax Law provided that "[t]he practice of law, medicine, dentistry or architecture, and the practice of any other profession...shall not be deemed an unincorporated business."

B. That the term "profession" within the meaning of Tax Law §703(c) indicates "knowledge of an advanced type in a given field of science or learning gained by a prolonged course of specialized instruction and study" (Citations omitted) (Matter of Rosenbloom v. State Tax Comm., 44 A.D.2d 69, 70, lv. to app. den. 34 N.Y.2d 518).

C. That although petitioner's activities required skill which was attained through study and experience, the activities did not result from a professed knowledge of some department of science or learning, acquired by a prolonged course of specialized instruction or study (Matter of Howard F. Jackson, State Tax Commission, January 23, 1981). In addition, it is noted that petitioner has not established that he has substantially satisfied the remaining criteria which are traditionally examined to determine whether an activity constitutes the practice of a profession within the meaning of Tax Law §703(c) (~~see~~ Matter of Rosenbloom v. State Tax Comm., 44 A.D.2d 69, lv. to app. den. 34 N.Y.2d 518, which sets the criteria traditionally examined and which held that the activity of appraising real estate did not constitute the practice of a profession within

the meaning of Tax Law §703[c]. Further, in Matter of Rosenbloom v. State Tax Comm., 97 A.D.2d 586, lv. to app. den. 61 N.Y.2d 603, the Appellate Division expressly declined to change that position. In view of the foregoing, the Audit Division properly denied Mr. Kitos' application for a refund of unincorporated business tax.

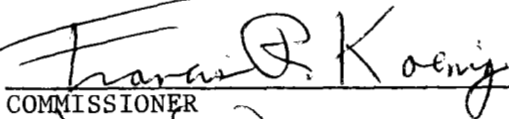
D. That the petition of John T. and Artemis P. Kitos is denied.

DATED: Albany, New York

STATE TAX COMMISSION

DEC 13 1985

PRESIDENT



COMMISSIONER



COMMISSIONER