

BUREAU OF LAW

MEMORANDUM

Unincorp. Bus Tax Determination

A-2

Davelle, Michael

TO: Commissioners Murphy, Macduff and Conlon

FROM: Vincent P. Molineaux, Hearing Officer

SUBJECT: MICHAEL DAVELLA

Application for revision or refund of
unincorporated business tax for the
years 1958 and 1959

A hearing on the above matter was held before me at 80 Centre Street, New York, N. Y. on November 28, 1966. The question involved herein is whether the taxpayer's activities as a maritime and marine surveyor and consultant are subject to unincorporated business tax under Article 16-A of the Tax Law or are exempt as a profession under Section 386 of that Article.

The applicant conducts his business from his home where he has an office equipped with a typewriter, adding machine, computer and a small desk. He employs a full time typist and from time to time up to three assistants depending on need.

The taxpayer describes himself in his income tax return as a marine surveyor and in the course of the hearing as a marine and maritime consultant. His stationery reads "Ship Surveys, Cargo, Maritime Consultants, Appraisers, Investigations".

Taxpayer's educational qualifications consist of three years at Pratt Institute where he studied architectural design, structural engineering and drafting for which he received a diploma. He also spent a year and a half at New York Structural Institute where he studied structural design and drafting and three years at the New York University College of Architecture and Engineering studying architecture, structural engineering and structural design. The subjects taken at New York University would lead to an academic degree but he did not complete the course. He holds no academic degree and no license or certification by the State or City of New York.

Taxpayer listed as part of his qualifications and background his employment from 1940 to 1942 as a marine consultant by Frederick R. Harris Company who were under a

classified contract to design and build sectional floating drydocks for use in the Pacific Theatre of World War II, and he prepared drawings which were later accepted as working drawings by the Navy Department.

One example of his work is to review findings of investigators for marine underwriters, and assess the damage, the cause, whether the vessel is or was seaworthy, and if not what conditions on the vessel were responsible, and make a written report.

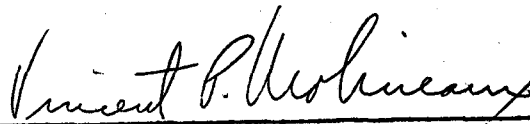
His services include testifying as an expert in admiralty courts and his services are rendered to several firms of admiralty attorneys, to shipowners, to American International Underwriters Corp., and Hartford Insurance Group. He works for a fee for each engagement. There are approximately ten people around the Port of New York engaged in the same activities as the taxpayer.

Taxpayer has been a full member since 1951 of the Society of Naval Architects and Marine Engineers. Qualifications for membership were not described other than that one must have a "large marine technical background."

While petitioner has indicated a broad knowledge of marine and maritime construction he has not completed the courses of study required of architects, engineers or other professions and has not claimed authorship of texts on his subject or association in a teaching or counseling capacity with institutions of higher learning which is sometimes taken in lieu of regular professional courses of study (see Teague v. Graves, 261 A.D. 657, aff'd no op., 287 N.Y. 549; Geiffert v. Mealey, 293 N.Y. 583).

Matter of Bowser v. Bates, 279 A.D. 956, reviewed under Article 78 of the Civil Practice Act and confirmed a determination of the State Tax Commission affirming an assessment of unincorporated business tax against an adjustor of marine loss who claimed exemption on the ground that he was practicing a profession.

In my opinion the taxpayer is not engaged in a profession within the meaning of Section 386 of the Tax Law and I recommend that the determination of the Tax Commission be substantially in the form submitted herewith.


Hearing Officer

March 9, 1967
VPM:kon 3-20-67
Enc.

**STATE OF NEW YORK
STATE TAX COMMISSION**

.....
IN THE MATTER OF THE APPLICATION

OF

MICHAEL DAVELLA

**FOR REVISION OR REFUND OF UNINCORPORATED
BUSINESS TAX UNDER ARTICLE 16-A OF THE
TAX LAW FOR THE YEARS 1958 AND 1959**
.....

The taxpayer Michael Davella having filed an application for revision or refund of unincorporated business tax under Article 16-A of the Tax Law for the years 1958 and 1959 and a hearing having been held at the office of the State Tax Commission, 80 Centre Street, New York, N. Y. on November 28, 1961 before Vincent P. Holloman, Hearing Officer of the Department of Taxation and Finance, and the record having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That the taxpayer filed resident returns of personal income for the years 1958 and 1959 on which the amount shown to be due was paid but did not file unincorporated business tax returns or pay unincorporated business tax.

(2) That on March 21, 1962 the Department of Taxation and Finance issued Assessment No. NY 275054 for unincorporated business tax for the year 1959 in the amount of \$225.41 and on July 18, 1962 issued Assessment No. AB 014310 for unincorporated business tax for the year 1958 in the amount of \$242.35 on the ground that the activities of the taxpayer during 1958 and 1959 constituted the carrying on of an unincorporated business subject to the provisions of Article 16-A of the Tax Law.

(3) That taxpayer has his office in his home at 182 98th Street, Brooklyn. The office is equipped with a typewriter,

adding machine, computer and a small desk. He employs one regular typist and up to three other persons from time to time as occasion arises. Taxpayer describes himself as a maritime and marine consultant (p. 13). His stationery reads "Ship Surveys, Cargo, Maritime Consultants, Appraisers, Investigations". His income tax returns and the application for revision describe him as a marine surveyor. He states that there are approximately ten other men around the Port of New York engaged in the same type of work which he does.

(4) That taxpayer's educational qualifications consist of three years at Pratt Institute where he studied architectural design, structural engineering and drafting for which he received a diploma. He also spent a year and a half at New York Structural Institute where he studied structural design and drafting and three years at the New York University College of Architecture and Engineering studying architecture, structural engineering and structural design. The subjects taken at New York University would lead to an academic degree but he did not complete the course. He holds no academic degree and no license or certification by the State or City of New York.

(5) As a part of his background, taxpayer was employed from 1940 to 1942 as a marine consultant by Frederick E. Harris Company who were under a classified contract to design and build sectional floating drydocks for use in the Pacific Theatre of World War II, and taxpayer prepared drawings which were later accepted as working drawings by the Navy Department.

(6) One example of his work is to review the findings of investigators for marine underwriters, and assess the damage, the cause, whether the vessel is or was seaworthy, and if not what conditions on the vessel were responsible, and make a written report.

(7) His services include testifying as an expert in admiralty courts and his services are rendered to several firms of admiralty attorneys, to shipowners, to American International Underwriters Corp., and Hartford Insurance Group. He is not salaried but is retained on a fee basis for each matter on which he is engaged.

(8) Tanager is a full member, since 1931, of the Society of Naval Architects and Marine Engineers whose objects are "To Advance the Art, science and practice of naval architecture, ship building and marine engineering, commercial and governmental, in all of their branches and of the allied arts and sciences, and to promote the professional integrity of its members." Qualifications for membership were not described other than that one must have a "large marine technical background."

(9) That while petitioner has indicated a broad knowledge of marine and maritime construction he has not completed the courses of study required of architects, engineers or other professions and has not claimed authorship of texts on his subject or consultation in a teaching or consulting capacity with institutions of higher learning which is sometimes taken in lieu of regular professional courses of study (see James V. Smith, 261 A.D. 637, aff'd no op., 267 N.Y. 519; William L. Miller, 293 N.Y. 503).

Based upon the foregoing findings, the State Tax Commission hereby

SUMMARY:

That the assessments made by the Department of Taxation and Finance (Inv. AS 01310 and WF 27505) for the years 1936 and 1939 were duly made in accordance with Section 306 of the Tax Law

that accordingly the assessments are correct; that the said assessments do not include any tax or charge which could not have been lawfully demanded and that the application filed in respect thereof be and the same is hereby denied.

Dated: Albany, New York this 23rd day of March 1907.

SEAL OF THE COMMISSIONER

/s/

Joseph H. Murphy

/s/

James R. Macduff

/s/

Walter Maclyn Conlon