

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

MICHAEL J. KODARAS & GRACE L.
KODARAS

For a Redetermination of a Deficiency or
a Refund of Unincorporated Business
Taxes under Article(s) 23 of the
Tax Law for the (Year(s) 1960, 1961 & :
1962

12
V. J. 104
1971
AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

State of New York
County of Albany

Martha Funaro , being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 17th day of September , 1971, she served the within
Notice of Decision (or Determination) by (certified) mail upon Michael J. Kodaras
& Grace L. Kodaras (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Michael J. & Grace L. Kodaras
157 Brewster Road
Scarsdale, New York

and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative
of) petitioner herein and that the address set forth on said wrapper is the last
known address of the (representative of the) petitioner.

Sworn to before me this

17th day of September, 1971

James Wilson

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

MICHAEL J. KODARAS & GRACE L.
KODARAS

For a Redetermination of a Deficiency or
a Refund of Unincorporated Business:
Taxes under Article(s) 23 of the
Tax Law for the (Year(s) 1960, 1961 &
1962

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

State of New York
County of Albany

Martha Funaro , being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 17th day of September , 1971 , she served the within
Notice of Decision (or Determination) by (certified) mail upon Judith T.

Younger (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: Judith T. Younger
33 West 56th Street
New York, New York 10019

and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative
of) petitioner herein and that the address set forth on said wrapper is the last
known address of the (representative of the) petitioner.

Sworn to before me this

17th day of September , 1971.

Linda Wilson

Martha Funaro

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :

of :

MICHAEL J. KODARAS & : DECISION
GRACE L. KODARAS :

for a Redetermination of a Deficiency :
or for Refund of Unincorporated Business :
Tax under Article 23 of the Tax Law for :
the years 1960, 1961 and 1962. :

Michael J. Kodaras and Grace L. Kodaras filed a petition under section 689 of the Tax Law for the redetermination of a deficiency in unincorporated business tax under Article 23 of the Tax Law for the years 1960, 1961 and 1962. A hearing was duly held before Nigel G. Wright, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York City, on January 29, 1971, with Marvin B. Segal, Esq. representing the petitioners and Edward H. Best, Esq. (Francis X. Boylan, Esq., of Counsel), representing the Income Tax Bureau. The record of such hearing has been duly examined and considered.

ISSUE

The issue in this case is whether or not the petitioner Michael J. Kodaras, who describes himself as an "acoustical consultant" is a professional within the meaning of section 703(c) of the Tax Law.

FINDINGS OF FACT

1. Mr. Kodaras resides in Scarsdale, New York. He reported certain amounts on his personal income tax returns as business income as an "acoustical engineer". During the years in question he had offices and laboratory facilities in Long Island City, Queens County,

New York. Mr. Kodaras' staff consists of three "consultants" (a mechanical engineer, a civil engineer, and an electrical engineer), a laboratory director and three laboratory assistants. Mr. Kodaras had from \$30,000 to \$50,000 invested in laboratory equipment during the years in question.

2. Mr. Kodaras consults on the acoustical design of new structures and on the acoustical modifications of old structures. His advice pertains mostly to the shape of a room and the interior furnishings of a room. He has a laboratory which conducts tests in the sound absorptive properties of various materials and the noise level produced by devices such as air-conditioners. Testing is done on a fee basis for most of the major manufacturers of acoustical material. Mr. Kodaras has made inventions of acoustical materials and acoustical devices. Mr. Kodaras was not able to show how much of his income was attributable to consulting and how much was attributable to laboratory tests.

3. Acoustics is defined as "the science of sound, including its production, transmission and effects". (Webster's New Collegiate Dictionary.) It is more broadly defined by petitioner, quoting from academic material, as "the science of mechanical radiation in all its aspects and applications, including origin (vibration of material media, etc.), transmission through material media, at all frequencies, and under the most adverse conditions, and reception...".

4. Acoustics has grown as a specialized field beginning in the 1930's. At first, manufacturers of building materials, primarily Johns Manville, trained experts for their own business purposes. In

the middle 1950's academic courses were started at leading universities at first in physical acoustics and later in architectural acoustics. These courses are taught as part of instruction in either physics or in engineering in programs leading to both undergraduate and graduate degrees. Since 1965 Pennsylvania State University has had an interdisciplinary program leading to a graduate degree in engineering acoustics.

5. Mr. Kodaras graduated from Manhattan College in 1937 with a Bachelor of Business Administration degree. He worked for a general contracting firm until 1945 and with Johns Manville until 1953. Since 1953 he has been an independent consultant.

6. Mr. Kodaras is a fellow of the Acoustical Society of America which requires at least five years' experience in the field, and is chairman of their Technical Committee of Architectural Acoustics. He was one of the founding members in 1952 of the National Council of Acoustical Consultants which today has 25 or 30 members. Presently, efforts are being made to organize an International Institute of Noise Control Engineering to publish a code of ethics and provide standards of certification. At present about 100 individuals in the country practice acoustical design. Mr. Kodaras is also a member of the American Society for Testing and Materials and his laboratory has been certified by many organizations.

7. Mr. Kodaras has lectured at Pennsylvania State University and the State University of New York at Stony Brook. Mr. Kodaras has lectured before the American Society for Heating, Refrigeration and Air-Conditioning Engineers and the American Institute of Architects.

8. Mr. Kodaras was a consultant on the drafting of the noise control division of the New York City Building Code.

9. Mr. Kodaras, with one other person, conducts a three-day school in various cities on the subject of sound transmission loss for the benefit of manufacturers of acoustical products, their salesmen and advertising staff and supervisory personnel engaged in evaluating the quality of acoustical work in the field. It is given in conjunction with laboratories where measuring equipment is demonstrated and acoustical tests are made.

10. Mr. Kodaras is not licensed in New York as an architect or engineer. However, he has consulted on the New York State Geneva Experiment Station, Bellevue Hospital, Manhattan, and various public high schools in New York State. While some documents in the record indicate that noise may have a deleterious effect on health, there is no direct evidence as to whether or not consulting activities concerning noise would be included within the language of section 7201 of Article 145 of the Education Law, which requires engineers to be licensed when their activities concern or involve "the safeguarding of life, health or property".

11. The deficiencies in issue are as follows: 1960, \$147.32 plus interest of \$42.00; 1961, \$841.86 plus interest of \$189.69; 1962, \$1499.44 plus interest of \$247.89.

CONCLUSIONS OF LAW

The petitioners have not carried the burden of proof that the occupation of acoustical consultant is entitled to exemption from the unincorporated business tax as a "professional" occupation. Aside

from close questions concerning academic requirements and licensing, the fact of the use of a large amount of capital by Mr. Kodaras and the lack of evidence concerning the precise amount of income from his various consulting activities which might otherwise be considered separate from activities requiring capital, both mitigate strongly against petitioner's contentions.

DATED: Albany, New York
September 17, 1971

STATE TAX COMMISSION

Norman Gallivan

COMMISSIONER

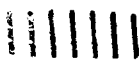
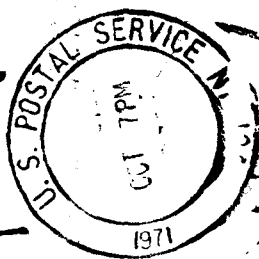
Bruce Manley

COMMISSIONER

Milton Koenig

COMMISSIONER

RADIO CITY
STATION





STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE
BUILDING 9, ROOM 214A
STATE CAMPUS
ALBANY, N. Y. 12226

STATE TAX COMMISSION

NORMAN F. GALLMAN, ACTING PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

AREA CODE 518
457-2655, 6, 7

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

Albany, New York

September 17, 1971

Michael J. & Grace L. Kodaras
157 Brewster Road
Scarsdale, New York

Dear Mr. & Mrs. Kodaras

Please take notice of the **Decision** of
the State Tax Commission enclosed herewith.

Please take further notice that pursuant to **section 722**
the Tax Law any proceeding in court to review an adverse decision
must be commenced within **4 Months** 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 relat-
ing hereto may be addressed to the undersigned. These will be referred
to the proper party for reply.

Very truly yours,

Nigel G. Wright
HEARING OFFICER

cc Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

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