

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

ARTHUR & LYDIA S. DANA

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) 1963 - 1965 :

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

State of New York  
County of Albany

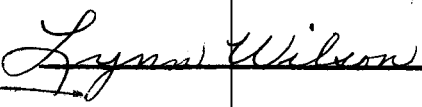
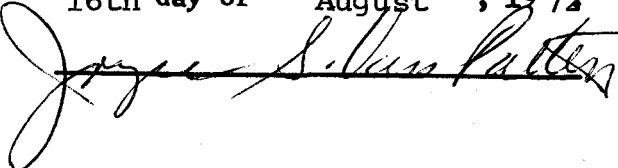
Lynn Wilson , being duly sworn, deposes and says that  
she is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 16th day of August , 1972 , she served the within  
Notice of Decision (or Determination) by (certified) mail upon ARTHUR &  
LYDIA S. DANA (representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Arthur W. & Lydia S. Dana  
60 Sutton Place So.  
New York, New York 10022

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

16th day of August , 1972

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

ARTHUR & LYDIA S. DANA

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) 1963 - 1965 ;

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OF NOTICE OF DECISION  
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State of New York  
County of Albany

Lynn Wilson , 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 16th day of August , 1972 , she served the within  
Notice of Decision (or Determination) by (certified) mail upon MILTON M.

WITCHEL, ESQ. (representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Milton M. Witchel, Esq.  
36 West 44th Street  
New York, 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

16th day of August , 1972.

*Jane S. Hatter*  
*Lynn Wilson*

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

ARTHUR & LYDIA S. DANA

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) 1963 - 1965 :

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

State of New York  
County of Albany

Lynn Wilson , 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 16th day of August , 1972 , she served the within  
Notice of Decision (or Determination) by (certified) mail upon ALAN PRINGAL,  
ESQ.

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

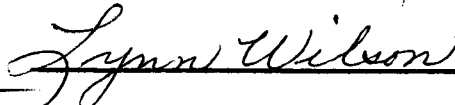
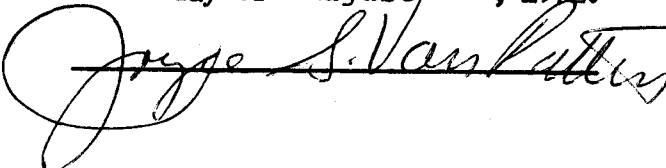
wrapper addressed as follows: Alan Pringal, Esq.  
36 West 44th Street  
New York, New York

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  
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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

16th day of August , 1972.



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A  
STATE CAMPUS

ALBANY, N. Y. 12227

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION

NORMAN F. GALLMAN, PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

STATE TAX COMMISSION  
HEARING UNIT

EDWARD ROOK  
SECRETARY TO  
COMMISSION

ADDRESS YOUR REPLY TO

**DATED:** Albany, New York  
**August 16, 1972**

**Arthur & Lydia S. Dana**  
**60 Sutton Place So.**  
**New York, New York 10022**

**Dear Mr. and Mrs. Dana:**

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

Please take further notice that pursuant to **section 722 of**  
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

In the Matter of the Petition :

of :

ARTHUR & LYDIA S. DANA :

DECISION

for a Redetermination of Deficiencies :  
or for Refund of Unincorporated Business :  
Taxes under Article 23 of the Tax Law :  
for the years 1963 through 1965.

Arthur and Lydia S. Dana filed a petition under section 689 of the Tax Law for refund of unincorporated business taxes paid under Article 23 of the Tax Law for the years 1963 through 1965. A hearing was held on January 26, 1971, at the offices of the State Tax Commission, 80 Centre Street, New York City, before Nigel G. Wright, Hearing Officer. Alan Prigal, Esq., and Milton M. Witchel, Esq., of Nearing, Soybel and Prigal appeared for petitioners and Edward H. Best, Esq., (Francis X. Boylan, Esq., of Counsel) appeared for the Income Tax Bureau. The record of said hearing has been duly examined and considered.

#### ISSUE

The issue in this case is whether a "food facilities operations consultant" is a professional within the meaning of section 703(c) of the Tax Law and so as to be exempt from the unincorporated business tax.

#### FINDINGS OF FACT

1. Mr. Dana describes his work as a "food facilities consultant". A food facilities consultant engages in the design of kitchen facilities and serving areas in various kinds of restaurants and institutions. He is concerned with area requirements, layout of the space and traffic fl

the design and choice of the type of equipment needed, the specification of the gas, electric, water and other utility requirements for such equipment, the purchase, inspection and installation of such equipment and the demonstration of the use of the layout. He must have a knowledge of health, sanitary and building codes.

2. Mr. Dana has been a member of the Food Facilities Consultant Society, now called Food Facilities Engineering Society, since its founding in 1935. It now has 130 members. The Society promotes research and requires that its members have no financial or other connection with companies supplying food facilities. An applicant must have practical experience in the field and is examined on this experience to become a member.

3. Since 1957, Cornell University has offered a degree of Bachelor of Science in Hotel Administration with a major in food facilities planning and design. It gives nine credit hours of courses specifically designated in this field. Practical work experience is required for the degree. A Masters degree has also been given in this field. Mr. Dana consulted with Cornell on the scope of the curriculum. Other schools offering classes in food facilities are Michigan State, University of Massachusetts, University of Denver, and Florida State University.

4. The activity of food facilities consulting is subject to no licensing requirements. It was not argued that it is part of the profession of engineering and in any event there is no evidence that Mr. Dana is licensed as an engineer.

5. Mr. Dana has an office currently at 41 East 42nd Street, New York City, and employs a secretary, a senior associate who supervises drafting work, and three draftsmen.

6. Mr. Dana's employment in the food industry began as a manager for Child's restaurants for five years. He then managed a restaurant in a department store, was a supervisor for a diversified group of restaurant interests and was a manager of the University Club in New York.

7. Mr. Dana has published a book called "Kitchen Planning for Quantity Food Service", used as a textbook in college courses and has written 30 or 40 articles for such magazines as "Restaurant Management" and "Architectural Record". He has lectured before private groups and college audiences.

#### CONCLUSIONS OF LAW

Mr. Dana is subject to tax. His occupation as a food facilities consultant is not a profession. Implicit in the term "professional" is knowledge of an advanced type in a well recognized field of science or learning gained by a prolonged course of specialized instruction and study as contrasted with skill in practical affairs gained primarily from experience (see Tower v. State Tax Commission, 282 N.Y. 407). The Commission will be slow to extend the exemption to new categories of activity (Wilson V. State Tax Commission, 282 App. Div. 1099). Academic degrees alone do not indicate a professional especially where the activity is to advise business concerns in the methods of conducting the business itself (Booz, Allen & Hamilton v. Bragalini, 2 AD 2d 639; Kormes v. Murphy 9 AD 2d 1003; Herman v. Murphy

14 AD 2d 473). A "restaurant and food engineer" has been held subject to tax (Blaike v. State Tax Commission, 267 App. Div. 923).

DECISION

The petition for refund is denied.

DATED: Albany, New York

August 16, 1972

STATE TAX COMMISSION

*Norman Gallivan*

COMMISSIONER

*Bruce Manley*

COMMISSIONER

*Milton Kohn*

COMMISSIONER