

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

MICHAEL KALETTE

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

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) 1962, 1963 :
and 1964.

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 10th day of May, 1972, she served the within Notice of Decision (or Determination) by (certified) mail upon MICHAEL KALETTE (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Michael Kalette
Hunterbrook Road
Yorktown Heights, New York 10598
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

10th day of May, 1972.

Martha Luvard

Lynn Wilson

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

MICHAEL KALETTE

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) 1962, 1963 :
and 1964.

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 10th day of May , 1972 , she served the within
Notice of Decision (or Determination) by (certified) mail upon HOMES & DAVIS
(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Homes & Davis
521 Fifth Avenue
New York, New York
Attention: Mr. Michael D. Waldman
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

10th day of May , 1972.

David H. Fuxs

Lynn Wilson



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

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

BUILDING 9, ROOM 214A

STATE CAMPUS
ALBANY, N. Y. 12227

AREA CODE 518
457-2655, 6, 7

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

DATED: Albany, New York
May 10, 1972

Michael Kalette
Hunterbrook Road
Yorktown Heights, New York 10590

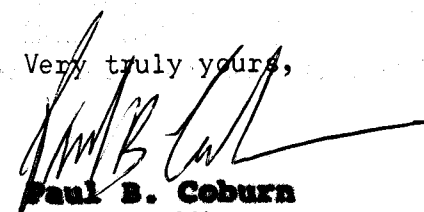
Dear Mr. Kalette:

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

Please take further notice that pursuant to section(s)
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 relating hereto may be
addressed to the undersigned. These will be referred
to the proper party for reply.

Very truly yours,


Paul B. Coburn
Hearing Officer

cc Petitioner's Representative
Law Bureau

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
MICHAEL KALETTE	:	DECISION
for Redetermination of Deficiency or	:	
for Refund of Unincorporated Business	:	
Taxes under Article 23 of the Tax Law	:	
for the Years 1962, 1963 and 1964.	:	

Petitioner, Michael Kalette, has filed a petition for redetermination of deficiency or for refund of unincorporated business taxes under Article 23 of the Tax Law for the years 1962, 1963 and 1964. (File No. 26139391). A formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York on October 27, 1970, at 9:30 A.M. Petitioner appeared pro se. The Income Tax Bureau appeared by Edward H. Best, Esq. (Solomon Sies, Esq., of Counsel).

FINDINGS OF FACT

1. Petitioner, Michael Kalette, filed New York State income tax resident returns for the years 1962, 1963 and 1964. He did not file any unincorporated business tax returns for those years.
2. On April 10, 1967, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Michael Kalette, imposing unincorporated business tax upon his business activities during the years 1962, 1963 and 1964 upon the grounds that his business activities constituted the carrying on of an unincorporated business and the income derived therefrom was subject to unincorporated business tax pursuant to Article 23 of the Tax Law and accordingly issued a Notice of Deficiency in the sum of \$4,909.84.

3. Petitioner, Michael Kalette, had no formal education beyond high school. He has never published any written articles or taught in any educational institutions in connection with his business activities. His first job was as an expeditor finding lost box cars and freight. From 1921 to 1946 he was involved in the technical aspects of the construction of industrial facilities. From 1950 to 1953 he served as special assistant and consultant to the Secretary of the Army on construction and allied matters.

4. In 1955, petitioner, Michael Kalette, was retained by Patterson-Emerson-Comstock Overseas, Inc. as a consultant. During the years 1962, 1963 and 1964 his work for it consisted of assisting it in carrying out engineering and construction contracts in connection with the construction of a steel mill in Italy. He served as a liaison between the American and Italian companies and personnel transposing construction and engineering techniques from one technology to the other.

5. On April 12, 1960, petitioner, Michael Kalette, entered into a written agreement with General Dynamics Corporation in which he agreed to render, as an independent consultant, such advice on engineering, construction and other business matters as requested by them. During the years 1962, 1963 and 1964 his work for them consisted of finding new lines of business in nondefense related industries to which the talent of the engineers of the Electric Boat Division of General Dynamics could be applied. He consulted with their engineers in the development of a unique gage control system for hot and cold rolling steel mills and of a nontoxic cleaning fluid for use in steel pickling lines. He also consulted with their engineers in connection with the design and manufacture of a controls system for a radio telescope to be built for the United States Navy.

6. That the relationship of petitioner, Michael Kalette, Patterson-Emerson-Comstock, Overseas, Inc. and General Dynamics Corporation was that of an independent contractor and not as an employee. On his federal income tax returns he listed his principal business activity as that of an "Engineering Consultant".

7. That more than 80% of petitioner's business income was derived from personal services rendered by him. Capital was not a material income producing factor.

8. Petitioner, Michael Kalette, during the years 1962, 1963 and 1964 was not licensed as a professional engineer by the State of New York in accordance with the provisions of Article 145 of the Education Law.

9. A portion of the services performed by petitioner, Michael Kalette, during the years 1962, 1963 and 1964 on behalf of General Dynamics Corporation and Patterson-Emerson-Comstock Overseas, Inc. required the application of engineering principles and data and was concerned with and involved the safeguarding of life, health and property.

CONCLUSIONS OF LAW

A. That to the extent that petitioner, Michael Kalette, during the years 1962, 1963 and 1964 consulted, investigated, evaluated, planned, designed or supervised construction in connection with any public or private structures, buildings, machines, equipment, processes, works or projects, wherein the safeguarding of life, health or property was concerned or involved and where such services required the application of engineering principles and data, he practiced professional engineering in accordance with the meaning and intent of section 7201(4) of the Education Law.

B. That since petitioner, Michael Kalette, during the years 1962, 1963 and 1964 was not licensed as a practicing professional engineer pursuant to section 7206 of the Education Law his aforesaid activities as a professional engineer did not constitute the practice of a profession exempt from the imposition of unincorporated business tax in accordance with the meaning and intent of section 703(c) of the Tax Law.

C. That petitioner's business activities during the years 1962, 1963 and 1964, which consisted of consulting with General Dynamics Corporation and Patterson-Emerson-Comstock Overseas, Inc. on construction and other business matters, did not constitute the practice of a profession exempt from the imposition of unincorporated business tax in accordance with the meaning and intent of section 703(c) of the Tax Law.

D. That the petition of Michael Kalette is denied and the Notice of Deficiency issued April 10, 1967, is sustained.

DATED: Albany, New York

STATE TAX COMMISSION

May 10, 1972.

COMMISSIONER

Alfred H. Hawley

COMMISSIONER

William Koehn

COMMISSIONER