

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
John T. & Artemis P. Kitos :
AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Unincorporated :
Business Tax under Article 23 of the Tax Law for :
the Years 1971-1973 & 1976-1979. :

State of New York :

ss.:

County of Albany :


Connie A. Hagelund, being duly sworn, deposes and says that she is an employee of the State Tax Commission, that she is over 18 years of age, and that on the 13th day of December, 1985, she served the within notice of Decision by certified mail upon John T. & Artemis P. Kitos, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

John T. & Artemis P. Kitos
204 Erregger Rd.
Syracuse, NY 13224

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

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

Sworn to before me this
13th day of December, 1985.


Authorized to administer oaths
pursuant to Tax Law section 174



STATE OF NEW YORK

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of :
John T. & Artemis P. Kitos :
for Redetermination of a Deficiency or Revision :
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AFFIDAVIT OF MAILING

State of New York :
ss.:
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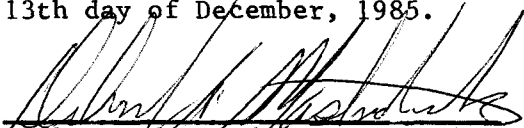
Connie A. Hagelund, being duly sworn, deposes and says that she is an employee of the State Tax Commission, that she is over 18 years of age, and that on the 13th day of December, 1985, she served the within notice of Decision by certified mail upon James G. DiStefano, the representative of the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

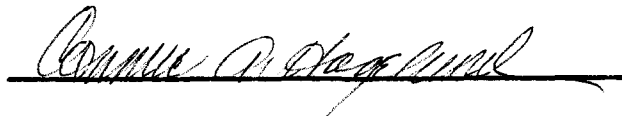
James G. DiStefano
Suite 304, State Tower Bldg.
Syracuse, NY 13202

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the 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
13th day of December, 1985.


Authorized to administer oaths
pursuant to Tax Law section 174



STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

December 13, 1985

John T. & Artemis P. Kitos
204 Erregger Rd.
Syracuse, NY 13224

Dear Mr. & Mrs. Kitos:

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

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 690 & 722 of the Tax Law, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only under Article 78 of the Civil Practice Law and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance
Law Bureau - Litigation Unit
Building #9, State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
James G. DiStefano
Suite 304, State Tower Bldg.
Syracuse, NY 13202
Taxing Bureau's Representative

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.

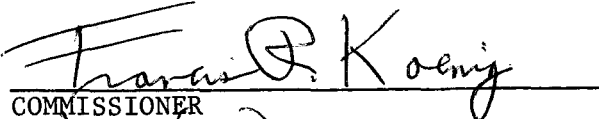
D. That the petition of John T. and Artemis P. Kitos is denied.

DATED: Albany, New York

STATE TAX COMMISSION

DEC 13 1985


PRESIDENT


COMMISSIONER


COMMISSIONER