

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

VALERIO J. ZERBO, JR. (Arts. 22 & 23)  
THERESA ZERBO (Art. 22)

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

For a Redetermination of a Deficiency or  
a Refund of Personal Income & Unincorporated Business  
Taxes under Article(s) 22 & 23 of the  
Tax Law for the Year(s) 1966.

State of New York  
County of Albany

JANET MACK, 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 30th day of October, 1975, she served the within

Notice of Decision ~~(for Redetermination)~~ by (certified) mail upon VALERIO J. ZERBO, JR. &

THERESA ZERBO ~~(representative of)~~ the petitioner in the within

proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: Mr. and Mrs. Valerio J. Zerbo, Jr.  
Alpine Road  
Greenwich, Connecticut

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)~~  
~~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

30th day of October, 1975.

Mary G. [Signature]

Janet Mack

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

VALERIO J. ZERBO, JR. & (Arts. 22 & 23)  
THERESA ZERBO (Art. 22)

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

For a Redetermination of a Deficiency or  
a Refund of Personal Income & Unincorporated Business  
Taxes under Article(s) 22 & 23 of the  
Tax Law for the Year(s) 1966.

State of New York  
County of Albany

JANET MACK

, 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 30th day of October, 1975, she served the within  
Notice of Decision ~~(for Determination)~~ by (certified) mail upon ARTHUR CHODOSH, ESQ.

(representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows:

Arthur Chodosh, Esq.  
515 Madison Avenue  
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

30th day of October, 1975

Mary L. Hoff

Janet Mack



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION  
HEARING UNIT

PAUL GREENBERG  
SECRETARY TO  
COMMISSION

STATE TAX COMMISSION

JAMES H. TULLY, JR., PRESIDENT  
MILTON KOERNER

BUILDING 9, ROOM 107  
STATE CAMPUS  
ALBANY, N.Y. 12227

AREA CODE 518

ADDRESS YOUR REPLY TO

Mr. Wright  
Mr. Coburn  
Mr. Leisner

(518) 457-3336

DATED: Albany, New York  
October 30, 1975

Mr. and Mrs. Valerio J. Zerbo, Jr.  
Alpine Road  
Greenwich, Connecticut

Dear Mr. and Mrs. Zerbo:

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

Please take further notice that pursuant to  
Section(s) **690 & 722** of the Tax Law, any  
proceeding in court to review an adverse deci-  
sion must be commenced within **4 months**  
from 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 relative  
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

Enc.

cc: Petitioner's Representative  
Law Bureau

AD-1.12 (8/73)

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
VALERIO J. ZERBO, JR.	:	DECISION
for a Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax and	:	
Unincorporated Business Tax under Articles	:	
22 and 23 of the Tax Law for the Year 1966.	:	

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In the Matter of the Petition	:	
of	:	
THERESA ZERBO	:	DECISION
for a Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Year	:	
1966.	:	

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Valerio J. Zerbo, Jr., Alpine Road, Greenwich, Connecticut, filed a petition for a redetermination of a deficiency issued under date of July 28, 1969, in the amount of \$1,515.74 in personal income tax and \$1,780.00 in unincorporated business tax plus \$451.94 interest and \$445.00 as a penalty for failure to file an unincorporated business tax return for a total of \$4,192.68.

Theresa Zerbo filed a petition for a redetermination of a deficiency issued under date of July 28, 1969, in the amount of \$97.43 plus \$13.36 for a total of \$110.74 in personal income tax under Article 22 of the Tax Law for the year 1966.

A hearing was held on May 16, 1972, at the offices of the State Tax Commission, 80 Centre Street, New York, New York, before Nigel G. Wright, Hearing Officer. The petitioner was represented by Arthur Chodosh, Esq., and the Income Tax Bureau was represented by Saul Heckelman, Esq., appearing by Francis X. Boylan, Esq. The record of said hearing has been duly examined and considered.

#### ISSUES

The issues in this case are (a) whether the petitioner, Mr. Zerbo, is engaged in an unincorporated business in New York and, (b) whether he is entitled to allocate his earned income from each of three sources according to days worked inside and outside of New York.

#### FINDINGS OF FACT

1. Valerio J. Zerbo, Jr. and Theresa Zerbo, the petitioners herein, are husband and wife and reside in Greenwich, Connecticut.
2. Mr. Zerbo is a specialist in point-of-sale display posters. He had started in advertising in 1928 as an art director of Niagara

Lithographing Co., a printing company, making posters and displays. By 1938, he was working in the more general field of advertising art.

3. Mrs. Zerbo received a salary from Zerbo, Inc. in 1966 and reported it as income but allocated part of it to non-New York sources. It was conceded at the hearing that it should have been all New York income.

4. Mr. Zerbo allocated all of his earned income on his return showing 110 days worked in New York and 120 days outside of New York. Of the 120 days, 74 days were spent in travel outside of New York and 46 days were spent at his home. His earned income was from three sources; Zerbo Inc., the firm of Sullivan, Stauffer, Calwell & Bayles, Inc., and from Rogers Engraving Company, all of New York City.

5. Mr. Zerbo had income of \$7,416.21 from Rogers Engraving Company of New York City, against which he took deductions of \$980.40 for expenses for a net amount of \$6,435.81. This was in the nature of a commission for the referral of clients to the company.

6. Zerbo, Inc. of 159 East 64 Street, New York City, was engaged in the business of advertising primarily in point-of-purchase display materials. It was incorporated in 1946. Mr. and Mrs. Zerbo were each 50% shareholders in that corporation. Mr. Zerbo was president and secretary and received a salary of \$34,500.00 in 1966. He was a

member of the company's profit sharing and major medical plans. Mrs. Zerbo was treasurer and received a salary of \$5,200.00. It had six other employees earning a total of \$54,000.00 a year. This corporation paid taxes under Article 9-A of the Tax Law and in 1966, computed its tax on the "alternative" basis of income plus salaries. It had no place of business outside of New York. Federal income and social security taxes and New York income taxes were withheld from Mr. Zerbo's salary.

7. Mr. Zerbo received a salary of \$19,999.92 in 1966 from Sullivan, Stauffer, Calwell & Bayles, Inc. of 525 Lexington Avenue, New York City, an advertising agency. He has been with them since 1963 or 1964, and he does general art work for them. He had a letter contract with them renewable every six months at the option of the agency. He had no office space there, however, and no fixed hours. He would go in about three times a week for two or three hours each. A major factor in his employment there was his prior work for the American Tobacco Company and his familiarity with their advertising needs. He was covered for group health insurance and group life insurance. Federal income and social security taxes were withheld from his salary, as well as New York income taxes.

8. Mr. Zerbo maintained a studio in his home in Greenwich, Connecticut in which he did creative work. He had an ulcer and was under doctor's orders to relax and stay home as much as possible.

9. The deficiency is based on denying Mr. Zerbo any allocation under the personal income tax and in addition, characterizing all of his income as business income for purposes of the unincorporated business tax.

#### CONCLUSIONS OF LAW

A. Mr. Zerbo appears to have been a legitimate employee of both of the corporations for which he worked. His other income was too casual and too small to incur an unincorporated business tax.

B. Mr. Zerbo is entitled to allocate as an employee for his salary income. His "home-work" must be disallowed as being merely for his own convenience. Furthermore, the ratio of days worked in and out of New York, which he has provided, is held to be applicable only to his income from Zerbo, Inc. It is inconceivable that he could have had the same ratios for the work of the advertising agency and since no other ratios were provided, all of such income must be considered New York income. The income received from Rogers Engraving Company is considered income from New York sources because of lack of specification of the place where that was earned.



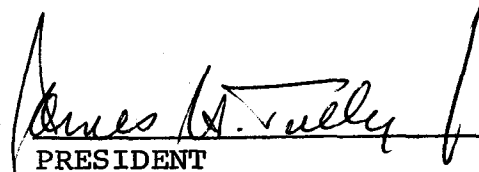
DECISION

With respect to Theresa Zerbo the deficiency is found to be correct and is due together with such interest as may be computed under section 684 of the Tax Law.

With respect to Valerio J. Zerbo, Jr. the deficiency in unincorporated business taxes is cancelled in its entirety, and the deficiency in personal income taxes is recomputed to be \$1,608.86, plus interest of \$220.62 to the date of the deficiency for a total of \$1,829.48 with such further interest as may be computed under section 684 of the Tax Law.

DATED: Albany, New York  
October 30, 1975

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

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COMMISSIONER