

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

RALPH E. MENEILLY and ANNA M. MENEILLY

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund  
of Personal Income & Unincorporated Business  
Taxes under Article(s) 22 & 23 of the  
Tax Law for the Year(s) ~~or Period(s)~~ :  
1967 and 1968.

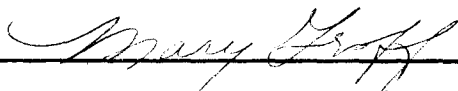
State of New York  
County of Albany

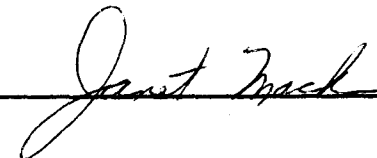
Janet Mack , being duly sworn, deposes and says that  
she is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 19th day of November , 1976 , she served the within  
Notice of Decision by (certified) mail upon Ralph E. and Anna M.  
Meneilly (~~representative of~~) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Mr. & Mrs. Ralph E. Meneilly  
628 Sedgwick Drive  
Syracuse, NY 13202  
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 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

19th day of December , 19 76

  
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STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

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AFFIDAVIT OF MAILING

RALPH E. MENEILLY and ANNA M. MENEILLY  
For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Personal Income & Unincorporated Business :  
Taxes under Article(s) 22 & 23 of the :  
Tax Law for the Year(s) ~~1967 and 1968~~ :  
1967 and 1968.

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 19th day of November , 1976 , she served the within  
Notice of Decision by (certified) mail upon James P. Burns, III, Esq.

(representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: James P. Burns, III, Esq.  
Hancock, Estabrook, Ryan, Shove & Hust  
1400 Mony Plaza  
Syracuse, NY 13202  
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 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

19th day of November , 1976.

Mary Groff

Janet Mack



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU  
STATE CAMPUS  
ALBANY, N.Y. 12227

ADDRESS YOUR REPLY TO

November 19, 1976

TELEPHONE: (518) **457-3850**

Mr. & Mrs. Ralph E. Meneilly  
628 Sedgwick Drive  
Syracuse, NY 13202

Dear Mr. & Mrs. Meneilly:

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.

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. They  
will be referred to the proper party for reply.

Very truly yours,

*[Signature]*  
Paul B. Coburn  
Supervising Tax  
Hearing Officer

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
RALPH E. MENEILLY and	:	
ANNA M. MENEILLY	:	
for Redetermination of a Deficiency or	:	DECISION
for Refund of Personal Income and	:	
Unincorporated Business Taxes under	:	
Articles 22 and 23 of the Tax Law for	:	
the Years 1967 and 1968.	:	

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Petitioners, Ralph E. Meneilly and Anna M. Meneilly, residing at 628 Sedwick Drive, Syracuse, New York, have filed a petition for redetermination of a deficiency or for refund of personal income and unincorporated business taxes under Articles 22 and 23 of the Tax Law for the years 1967 and 1968. (File No. 01635). A formal hearing was held before L. Robert Leisner, Esq., Hearing Officer, on July 23, 1975, at 3:00 P.M. and continued before Julius E. Braun, Esq., Hearing Officer, on March 31, 1976, at 2:45 P.M., at the offices of the State Tax Commission, State Office Building, Syracuse, New York. Petitioners appeared by James P. Burns, III, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq., (Alexander Weis, Esq., of counsel).

ISSUE

Whether property owned by petitioners, Ralph E. Meneilly and Anna M. Meneilly, situated on Leavenworth Avenue, Syracuse, New York, was used for business purposes.

(2)

FINDINGS OF FACT

1. Petitioners, Ralph E. Meneilly and Anna M. Meneilly, timely filed New York State unincorporated business tax and New York State income tax resident returns for the years 1967 and 1968.

2. On April 12, 1971, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, Ralph E. Meneilly and Anna M. Meneilly, assessing additional tax for the gain realized pursuant to condemnation of their business property. Accordingly, a Notice of Deficiency was issued on April 12, 1971 in the amount of \$1,556.13.

3. In March 1941, petitioner, Ralph E. Meneilly, acquired property at 413 Leavenworth Avenue, Syracuse, New York, consisting of some 26,312 square feet, which was utilized in the manufacture of pallets and shipping cases in his business known as Syracuse Shipping Case Company. There was located thereon, a one story frame storage shed of 1,154 square feet used to store lumber, related materials and woodworking machines.

4. In 1965, the property was appropriated for the construction of an interstate route. In 1966, a claim was filed with the Court of Claims. Justice Cooke found that the property had been used as a lumber storage business in conjunction with the owner's fabricating woodworking shop, carried on at another location. The Court had viewed the property, and in 1968, an

(3)

award was made and judgment was entered for the sum of \$37,588.72 together with interest of \$3,884.16 for a total sum of \$41,472.88. Following the appropriation, the Bureau of Rights of Way of the New York State Department of Public Works, pursuant to affidavit, allowed petitioner, Ralph E. Meneilly, the sum of \$342.13 for removing his equipment, furniture and personal property from the site and for storing his equipment. The stock and supplies moved and stored were five thousand linear feet of lumber, sixteen shop trucks, twenty four steel and wood pallets, five machines and six steel drums. Equipment moved included a handhole machine, a matching machine, a grooving machine, a sanding machine and nailing machine parts. During negotiations, an employee of the Department of Transportation, who was the rights-of-way agent, viewed lumber in the storage shed for use in petitioner, Ralph E. Meneilly's business, and also various machinery enumerated supra.

#### CONCLUSIONS OF LAW

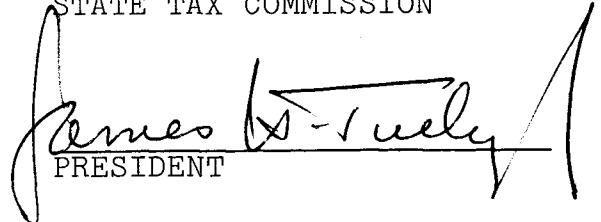
A. That in 1965, the property at 413 Leavenworth Avenue, Syracuse, New York, contained material stored and used in connection with petitioner, Ralph E. Meneilly's business regularly carried on elsewhere prior to appropriation. Therefore, the gain realized from the condemnation of property at 413 Leavenworth Avenue, Syracuse, New York, in 1967 and 1968 is includable in unincorporated business gross income according to the meaning and intent of section 703 of the Tax Law.

(4)

B. That the petition of Ralph E. Meneilly and Anna M. Meneilly is denied and the Notice of Deficiency issued April 12, 1971, is sustained.

DATED: Albany, New York  
November 19, 1976

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER