

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
DEMETRIO & ANTOINETTE GUERRINI-
MARALDI

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) :
1969, 1970 and 1971

State of New York
County of Albany

Marsina Donnini, 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 15 day of July, 1977, she served the within
NOTICE OF DECISION by (certified) mail upon Arthur Tower, CPA

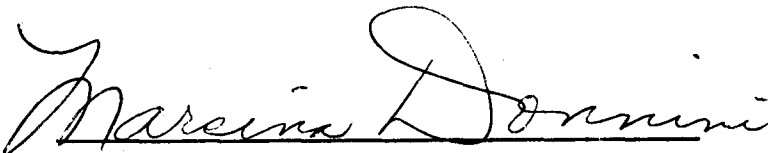
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Arthur Tower, CPA
225 Broadway
New York, New York 10007

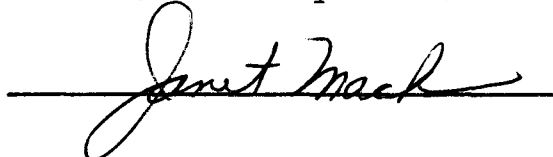
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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

15 day of July, 1977.





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

DEMETRIO & ANTOINETTE GUERRINI-

MARALDI

For a Redetermination of a Deficiency or
a Revision of a Determination or a Refund
of Personal Income & Unincorporated
Businesses under Article(s) 22 & 23 of the
Tax Law for the Year(s) or Period(s)
1969, 1970 and 1971

AFFIDAVIT OF MAILING

State of New York
County of Albany

Marsina Donnini

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she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 15 day of July , 1977 , she served the within

NOTICE OF DECISION by (certified) mail upon Demetrio &
Antoinette Guerrini-Maraldi

(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. Guerrini-Maraldi
156 West 46th Street
Suite 810

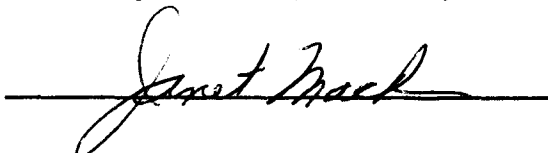
New York, New York 10036
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~~XXXX~~) petitioner herein and that the address set forth on said wrapper is the
last known address of the (~~representative of the~~) petitioner.

Sworn to before me this

15 day of July , 19 77


Marsina Donnini


Janet Mack



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

JAMES H. TULLY JR., PRESIDENT
MILTON KOERNER
THOMAS H. LYNCH

July 15, 1977

Mr. & Mrs. Guerrini-Maraldi
156 West 46th Street
Suite 810
New York, New York 10036

Dear Mr. & Mrs. Guerrini-Maraldi:

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, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws 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 the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,

Joseph Chyrywaty
Hearing Examiner

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
DEMETRIO & ANTOINETTE GUERRINI-MARALDI : DECISION
for Redetermination of a Deficiency or :
for Refund of Personal Income and Unin- :
corporated Business Taxes under Articles :
22 and 23 of the Tax Law for the Years :
1969, 1970 and 1971. :
:

Petitioners, Demetrio and Antoinette Guerrini-Maraldi, residing at 156 West 46th Street, Suite 810, New York, New York 10036, 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 1969, 1970 and 1971. (File No. 1-72340459).

A small claims hearing was held before Joseph A. Milack, Small Claims Hearing Officer, on January 26, 1977, at 1:15 P.M. at the offices of the State Tax Commission, Two World Trade Center, New York, New York. The petitioners appeared by Arthur Tower, C.P.A. The Income Tax Bureau appeared by Peter Crotty, Esq., (Abraham Schwartz, Esq. of counsel).

ISSUES

I. Was the income derived from petitioner, Demetrio Guerrini-Maraldi's business activities during the years 1969, 1970 and 1971 subject to unincorporated business tax?

II. Whether petitioner, Antoinette Guerrini-Maraldi, is liable for additional New York State personal income and minimum income tax for the year 1971 as a result of Internal Revenue Service audit changes for said year.

FINDINGS OF FACT

1. Petitioners, Demetrio and Antoinette Guerrini-Maraldi, filed New York State combined income tax returns for the years 1969, 1970 and 1971. Petitioner, Demetrio Guerrini-Maraldi, did not file New York State unincorporated business tax returns for said years.

2. On September 30, 1974, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Demetrio Guerrini-Maraldi, imposing unincorporated business tax upon the income he received during the years 1969, 1970 and 1971 as a representative of the Insurance Underwriters at Lloyd's, London. In accordance with the aforesaid Statement of Audit Changes which also included an adjustment to 1971 business income to reflect an adjustment made by the Internal Revenue Service for said year, the Income Tax Bureau issued a Notice of Deficiency in the sum of \$1,107.51.

3. On September 30, 1974, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Antoinette Guerrini-Maraldi, imposing additional income tax due for the year 1971 upon the grounds that changes made to her 1971 Federal income tax return by the Internal Revenue Service resulted in additional New York State taxable income. In accordance with the aforesaid Statement

of Audit Changes, it issued a Notice of Deficiency in the sum of \$869.82.

4. Petitioner, Antoinette Guerrini-Maraldi's representative withdrew her petition during the small claims hearing on January 26, 1977.

5. During the years 1969, 1970 and 1971, petitioner, Demetrio Guerrini-Maraldi, received income of \$25,000.00, \$28,750.00 and \$28,455.60, respectively, from Underwriters at Lloyd's, London for services of representing their interest "... with regard to former insurance and reinsurance contracts underwritten by them and related claims falling thereunder ...". The aforesaid income was to be applied as needed, to all expenses related to the previously stated objective; the portion remaining after such expenditures was retained by petitioner.

6. Petitioner, Demetrio Guerrini-Maraldi, was responsible for the safekeeping of files and records related to unsettled claims, overseeing the adjustment and settlement of claims and, in general, acting as a liaison between the claimants and the Underwriters at Lloyd's, London. To accomplish these responsibilities, he hired a secretary and maintained an office which consisted of three small private rooms.

7. The underwriters at Lloyd's, London did not withhold Federal or New York State income taxes or social security tax from the payments made to petitioner, Demetrio Guerrini-Maraldi. Petitioner deducted all expenses incurred in connection

with the aforesaid activities on schedule "C" of his Federal income tax returns.

8. There was no arrangement between petitioner, Demetrio Guerrini-Maraldi, and the Underwriters of Lloyd's, London, as to his division of time, nor was supervision or control exercised over his activities. He was free to work for or represent other principals, although he did not do so during the years at issue.

CONCLUSIONS OF LAW

A. That the income received by petitioner, Demetrio Guerrini-Maraldi, from the Underwriters at Lloyd's, London during the years 1969, 1970 and 1971 constituted income received as an independent contractor and not compensation as an employee.

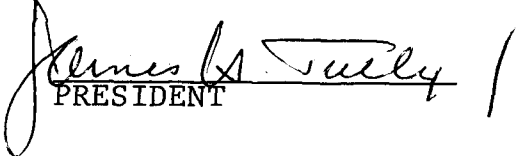
B. That petitioner, Demetrio Guerrini-Maraldi's activities constituted the carrying on of an unincorporated business and his income derived therefrom is subject to the unincorporated business tax in accordance with the meaning and intent of section 703 of the Tax Law.

C. That the petition of Demetrio Guerrini-Maraldi is denied and the Notice of Deficiency issued against him on September 30, 1974 is sustained.

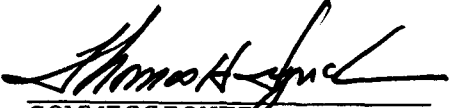
D. That in accordance with Antoinette Guerrini-Maraldi's withdrawal of petition, the Notice of Deficiency issued against her on September 30, 1974 is sustained.

DATED: Albany, New York
July 15, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

SMALL CLAIMS

TA-26 (4-76) 25M

STATE OF NEW YORK

Department of Taxation and Finance

TAX APPEALS BUREAU

STATE CAMPUS

ALBANY, N. Y. 12227

Mr. & Mrs. Guerrini-Maraldi
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State of New York
County of Albany

Marsina Donnini, being duly sworn, deposes and says that
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Notice of Decision by (certified) mail upon Demetrio & Antoinette
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1271 Ave. of the Amer. #270
New York, New York 10020
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Sworn to before me this

11 day of August, 1977.

Marsina Donnini

Janet Masch