

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Carlos Marquez & Waldina H. Sterling :
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of
Personal Income Tax :
under Article 22 of the Tax Law
for the Years 1971 & 1972. :

AFFIDAVIT OF MAILING

State of New York
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 28th day of September, 1979, he served the within notice of Decision by certified mail upon Carlos Marquez & Waldina H. Sterling, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

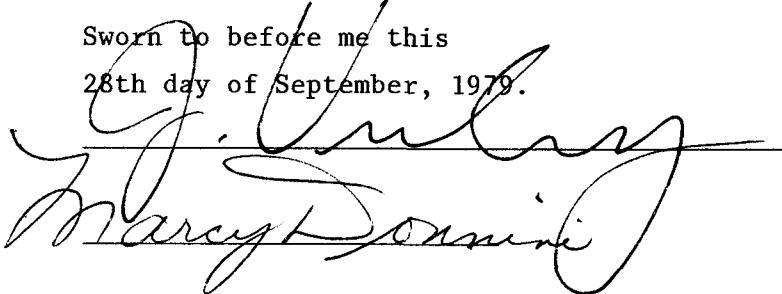
Carlos Marquez & Waldina H. Sterling
355 E. 72nd St.

New York, NY 10021

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 petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
28th day of September, 1979.



STATE OF NEW YORK
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In the Matter of the Petition :
of
Carlos Marquez & Waldina H. Sterling :
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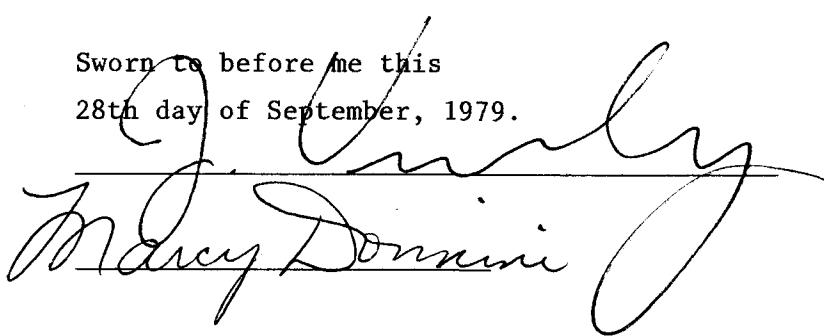
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 28th day of September, 1979, he served the within notice of Decision by certified mail upon Renan Mazorra the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. Renan Mazorra
49-10 43rd St.
Woodside, NY 11377

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
28th day of September, 1979.


Nancy Donnini

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

JOHN J. SOLLECITO
DIRECTOR

Telephone: (518) 457-1723

September 28, 1979

Carlos Marquez & Waldina H. Sterling
355 E. 72nd St.
New York, NY 10021

Dear Mr. & Mrs. Sterling:

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 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,



cc: Petitioner's Representative
Renan Mazorra
49-10 43rd St.
Woodside, NY 11377
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
CARLOS MARQUEZ-STERLING : DECISION
and :
WALDINA H. STERLING :
for Redetermination of a Deficiency or for :
Refund of Personal Income Tax under :
Article 22 of the Tax Law for the Years :
1971 and 1972. :
:

Petitioners, Carlos Marquez-Sterling and Waldina H. Sterling, 355 East 72nd Street, New York, New York 10021, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1971 and 1972 (File No. 13776).

A small claims hearing was held before William Valcarcel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on September 20, 1978 at 2:45 P.M. Petitioners appeared by Renan Mazorra, Accountant. The Income Tax Bureau appeared by Peter Crotty, Esq. (Samuel Freund, Esq., of counsel).

ISSUE

Whether petitioners' expropriation losses were properly computed for 1971 and 1972.

FINDINGS OF FACT

1. Petitioners, Carlos Marquez-Sterling and Waldina H. Sterling, filed New York State income tax resident returns for 1971 and 1972, on which they claimed a Cuban expropriation loss.
2. The Income Tax Bureau obtained a Consent Fixing Period of Limitation upon Assessment of Personal Income and Unincorporated Business Tax from petitioners, which extended the period of limitation for 1971, in accordance with section 683(c)(2) of the Tax Law.
3. On December 22, 1975, a Notice of Deficiency was issued against petitioners for 1971 and 1972, based on their failure to respond to the Income Tax Bureau's letter of February 15, 1974 which requested a detailed schedule of the claimed losses.
4. Petitioner Carlos Marquez-Sterling contended that the losses which he claimed for 1971 and 1972 were incurred as a result of the confiscation of his business property in Cuba by the Cuban government.
5. The Income Tax Bureau did not question the deductibility of the foreign expropriation losses, or the facts relating to these losses; rather, it wanted to ascertain whether petitioner properly computed and applied said losses which he claimed for 1971 and 1972.
6. Petitioner Carlos Marquez-Sterling was granted an extension of time in which to submit a detailed schedule of the foreign expropriation losses at issue to November 27, 1978; however, no schedule or other documentary evidence was submitted.

CONCLUSIONS OF LAW

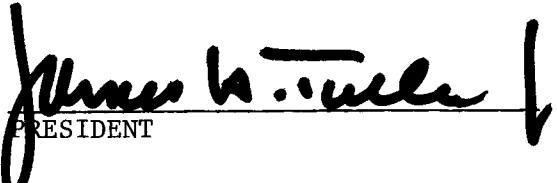
A. That petitioners did not sustain the burden of proof which was required to establish that the foreign expropriation losses claimed for 1971 and 1972 were properly computed and applied, in accordance with the meaning and intent of section 172(b)(1)(D) of the Internal Revenue Code and Article 22 of the Tax Law.

B. That the petition of Carlos Marquez-Sterling and Waldina H. Sterling is denied and the Notice of Deficiency issued December 22, 1975 is sustained, together with such additional interest as may be lawfully owing.

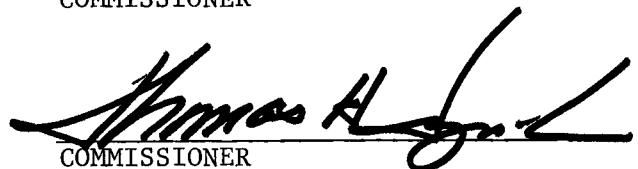
DATED: Albany, New York

STATE TAX COMMISSION

SEP 28 1979


James H. Tully
PRESIDENT


Martin Krum
COMMISSIONER


Thomas H. Sjard
COMMISSIONER