

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

GEORGE H. WEINROTT and

MATILDA R. WEINROTT

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) 1961, 1962  
and 1963.

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

State of New York  
County of Albany

Lynn Wilson , 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 April , 1973 , she served the within  
Notice of Decision (or Determination) by (certified) mail upon GEORGE H. WEINROTT  
and MATILDA R. WEINROTT (representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: George H. and Matilda R. Weinrott  
135 So. 19 Street  
Philadelphia, Pennsylvania  
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 April , 1973.

Matilda Weinrott

Lynn Wilson

STATE OF NEW YORK  
STATE TAX COMMISSION

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MATILDA R. WEINROTT

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State of New York  
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Lynn Wilson , 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 April , 1973 , she served the within  
Notice of Decision (or Determination) by (certified) mail upon LOUIS JOBRACK

(representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: Mr. Louis Jobrack  
277 Broadway  
New York, New York

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 April , 1973

Frank J. Durand

Lynn Wilson



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A  
STATE CAMPUS

ALBANY, N. Y. 12227

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION

NORMAN F. GALLMAN, PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

STATE TAX COMMISSION  
HEARING UNIT

EDWARD ROOK

SECRETARY TO  
COMMISSION

ADDRESS YOUR REPLY TO

**DATED:** Albany, New York  
**April 30, 1973**

**George H. and Matilda Weinrott**  
**135 So. 19 Street**  
**Philadelphia, Pennsylvania**


**Dear Mr. and Mrs. Weinrott:**

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

Please take further notice that pursuant to **sections 690 & 722**  
the Tax Law any proceeding in court to review an adverse decision  
must be commenced within **4 months** after  
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 relat-  
ing hereto may be addressed to the undersigned. These will be referred  
to the proper party for reply.

Very truly yours,

  
**Paul B. Coburn**  
HEARING OFFICER

cc Petitioner's Representative  
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petitions	:	
	:	
of	:	
	:	
GEORGE H. WEINROTT and	:	
MATILDA R. WEINROTT	:	DECISION
	:	
for Redetermination of Deficiency or	:	
for Refund of Personal Income Tax and	:	
Unincorporated Business Taxes under	:	
Articles 22 and 23 of the Tax Law for	:	
the Years 1961, 1962 and 1963.	:	
	:	

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Petitioners, George H. Weinrott and Matilda R. Weinrott, have filed petitions for redetermination of deficiency or for refund of personal income and unincorporated business taxes under Articles 22 and 23 of the Tax Law for the years 1961, 1962 and 1963. (File Nos. 1-6169086 and 3-6627625). A formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York, on February 18, 1972, at 9:00 A.M. Petitioner, George H. Weinrott, appeared pro se and for his wife, petitioner, Matilda R. Weinrott. The Income Tax Bureau appeared by Saul Heckelman, Esq., (Alexander Weiss, Esq., of Counsel).

ISSUES

I. Were petitioners, George H. Weinrott and Matilda R. Weinrott, residents of New York State during the year 1961?

II. Did petitioner, George H. Weinrott's activities as a finance and housing consultant during the years 1961, 1962 and 1963 constitute the carrying on of an unincorporated business?

III. If petitioner, George H. Weinrott, was carrying on an unincorporated business during the years 1961, 1962 and 1963, what portion of the income derived therefrom should be allocated to New York State?

FINDINGS OF FACT

1. Petitioners, George H. Weinrott and Matilda R. Weinrott, filed New York State combined nonresident income tax returns for the years 1961, 1962 and 1963. They did not file New York State unincorporated business tax returns for said years.

2. On April 13, 1965, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, George H. Weinrott and Matilda R. Weinrott, imposing additional personal income tax for the year 1961 upon the grounds that they were residing in New York State during said year. It also imposed unincorporated business tax upon petitioner, George H. Weinrott's net business income for said year upon the grounds that his activities as a financial consultant constituted the carrying on of an unincorporated business. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$477.86.

3. On February 20, 1967, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, George H. Weinrott and Matilda R. Weinrott, imposing additional personal income tax for the year 1963 upon the grounds that all of petitioner, George H. Weinrott's net business income for said year was subject to the personal income tax and accordingly issued a Notice of Deficiency in the sum of \$1,996.51.

4. On February 20, 1967, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, George H. Weinrott, imposing unincorporated business tax upon the income received by him from his business activities during the years 1962 and 1963

upon the grounds that said activities constituted the carrying on of an unincorporated business and accordingly issued a Notice of Deficiency in the sum of \$1,741.01.

5. Petitioner, George H. Weinrott, was a finance and housing consultant during the years 1961, 1962 and 1963. He conducted business under the name George H. Weinrott & Co. He specialized in giving advice in regard to obtaining mortgage loans on housing projects.

6. Petitioner, George H. Weinrott, had been a mortgage broker and finance and housing consultant since 1931. He offered no proof as to his educational background or other achievements in his field of endeavor.

7. During the years 1961, 1962 and 1963 petitioner, George H. Weinrott, maintained an office at 27 East 62nd Street in New York City. He deducted expenses for office rent, travel, telephone and other miscellaneous items on Schedule "C" of his federal income tax returns. The firms from whom he received fees and commissions did not withhold Federal and New York State income taxes or social security tax from his compensation, with the exception of a Canadian client which withheld certain Canadian income taxes. The firms from whom he received compensation did not exercise any substantial supervision or control over him with respect to the time, manner and means of his carrying on of his business activities.

8. Petitioner, George H. Weinrott, spent 204 days outside of New York State during the year 1961. Petitioner, Matilda R. Weinrott, spent only a few weekends in New York State during said year.

9. Petitioners, George H. Weinrott and Matilda R. Weinrott, maintained an apartment at 27 East 62nd Street in New York City. The apartment was part of the office referred to in paragraph "7".

The office and apartment consisted of two rooms, a kitchen and a bath located on the ground floor of the building. One of the rooms was used as an office and one as a bedroom. They have occupied the premises continuously from 1961 to date.

10. Petitioner, George H. Weinrott, did not have a regular place of business in Toronto, Canada during the year 1963. The premises at 62 Richmond Street, Toronto, Canada, which he listed on his tax return as an office, was the place of business of one of his principals.

11. Petitioners, George H. Weinrott, who was 67 years old in 1961, and Matilda R. Weinrott, maintained a room and bath in their son's home in Bala Cynwyd, Pennsylvania during the years 1961, 1962 and 1963. They had built the house and had given it to their son. Petitioner, Matilda R. Weinrott, spent most of her time at the Pennsylvania home. Petitioner, George H. Weinrott, spent his time there when he was not at his New York office or traveling. All of their tax returns used a Pennsylvania address. Their domicile had always been in Pennsylvania.

#### CONCLUSIONS OF LAW

A. That the activities of petitioner, George H. Weinrott, as a finance and housing consultant during the years 1961, 1962 and 1963, although requiring special knowledge and experience, did not constitute the practice of a profession exempt from the imposition of the unincorporated business tax in accordance with the meaning and intent of section 703(c) of the Tax Law.

B. That petitioner, George H. Weinrott's room in his son's home in Pennsylvania during the years 1961, 1962 and 1963 and the office of his client in Toronto, Canada during the years 1962 and 1963 did not constitute regular places of business outside of New York State in accordance with the meaning and intent of section 707(a) of the Tax Law.

C. That since petitioner, George H. Weinrott, did not have a regular place of business outside of New York State during the years 1961, 1962 and 1963 all of his business income, including income derived from out-of-state clients during the period, was properly allocated to New York State in accordance with the meaning and intent of section 707(a) of the Tax Law.

D. That the business income received by petitioner, George H. Weinrott, during the years 1961, 1962 and 1963 constituted receipts from his regular business as a finance and housing consultant and not compensation as an employee exempt from the imposition of the unincorporated business tax in accordance with the meaning and intent of section 703(b) of the Tax Law.

E. That the aforesaid activities of petitioner, George H. Weinrott, during the years 1961, 1962 and 1963 constituted the carrying on of an unincorporated business and his income derived therefrom was subject to the unincorporated business tax in accordance with the meaning and intent of section 703 of the Tax Law.

F. That petitioners, George H. Weinrott and Matilda R. Weinrott, during the year 1961 were domiciled in the State of Pennsylvania, maintained a permanent place of abode in New York State, but spent less than 183 days in New York State during said year and, therefore, they were not resident individuals during said year in accordance with the meaning and intent of sections 605(a)(2) and 605(b) of the Tax Law.

G. That the petitions of George H. Weinrott and Matilda R. Weinrott are granted to the extent of cancelling the assessment for additional personal income tax due for the year 1961 in the sum of \$315.01; that the Income Tax Bureau is hereby directed to accordingly modify the Notice of Deficiency issued April 13, 1965;



and, that except as so granted, the petitions are in all other respects denied.

DATED: Albany, New York  
April 30, 1973

STATE TAX COMMISSION

  
COMMISSIONER

  
COMMISSIONER

  
COMMISSIONER