

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

ARTHUR and MARGARET D'ARAZIEN

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Personal Income :  
Taxes under Article ~~(s)~~ 22 of the :  
Tax Law for the Year ~~(s) or Period(s)~~ 1972.:  
\_\_\_\_\_

State of New York  
County of Albany

Bruce Batchelor , 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 4th day of March , 1977 , ~~she~~ served the within  
Notice of Decision by (certified) mail upon Arthur & Margaret  
D'Arazien ~~(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. Arthur D'Arazien  
92. W. Hills Road  
New Canaan, Connecticut 06840

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)~~  
~~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

4th day of March , 1977.

Bruce Batchelor

Janet Mack

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

ARTHUR and MARGARET D'ARAZIEN

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Personal Income :  
Taxes under Article (x) 22 of the :  
Tax Law for the Year(s) ~~or Period(s)~~ 1972. :

AFFIDAVIT OF MAILING

State of New York  
County of Albany

Bruce Batchelor , 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 4th day of March , 1977, he served the within  
Notice of Decision by (certified) mail upon Kenneth Mersel  
(representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Kenneth Mersel, CPA  
Marlin, Klein, Bier, Brown & Mersel, P.C.  
450 Seventh Avenue  
New York, New York 10001  
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

4th day of March , 1977.

Bruce Batchelor

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

March 4, 1977

TELEPHONE: (518) **457-1723**

Mr. & Mrs. Arthur D'Arazien  
92 W. Hills Road  
New Canaan, Connecticut 06840

Dear Mr. & Mrs. D'Arazien:

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

Please take further notice that pursuant to  
Section(~~8~~) **690** 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,

**Frank J. Puccia**  
**Supervisor of Small**  
**Claims Hearings**

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 :

ARTHUR AND MARGARET D'ARAZIEN : DECISION

for Redetermination of a Deficiency or for :  
Refund of Personal Income Taxes under  
Article 22 of the Tax Law for the Year 1972:

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Petitioners, Arthur and Margaret D'Arazien, residing at 92 W. Hills Road, New Canaan, Connecticut 06840, have filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1972 (File No. 2-23233751).

A small claims hearing was held before Philip Mercurio, Small Claims Hearing Officer, on July 15, 1976 at 9:15 A.M. at the offices of the State Tax Commission, Two World Trade Center, New York, New York. The petitioner appeared by Kenneth Mersel and for his wife, petitioner, Margaret D'Arazien. The Income Tax Bureau appeared by Peter Crotty, Esq. (William Fox, Esq. of counsel).

ISSUES

I. Whether days worked at home in Connecticut by the petitioner, Arthur D'Arazien, during 1972 were allocable as days worked outside New York State.

II. Whether the wages by petitioner, Margaret D'Arazien, during 1972 are taxable to New York State.

FINDINGS OF FACT

1. Petitioners, Arthur and Margaret D'Arazien, filed a New York State nonresident return for the year 1972. They allocated the income received by petitioner, Arthur D'Arazien, from Scott Darazien, Inc., based upon the number of days he alleged to have worked within and without New York State during said year. The income received by the petitioner, Margaret D'Arazien, was excluded entirely, in that the work performed was done entirely out of New York State.

2. On November 23, 1974, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, Arthur and Margaret D'Arazien, correcting the total days in the year and total nonworking days claimed, and disallowing an allocation of two days worked at home during the year 1967 by petitioner, Arthur D'Arazien, as days worked without New York State. It also taxed the wages received by the petitioner, Margaret D'Arazien, on the basis that time spent at a taxpayer's home is not a proper basis for allocating wages outside New York State. In accordance with the aforesaid Statement of Audit Changes, the Income Tax Bureau issued a Notice of Deficiency in the sum of \$62.84.

3. Petitioners, Arthur and Margaret D'Arazien, were residents of the State of Connecticut during the year 1972. They resided in a home located in New Canaan, Connecticut.

4. Petitioners, Arthur and Margaret D'Arazien, owned and were employed by Scott Darazien, Inc., which was located at 6 East 39th Street, New York, New York. The said corporation maintained one office.

5. Petitioner, Arthur D'Arazien, was employed as a photographer. He performed his services both within and without New York State. The petitioner, Arthur D'Arazien, was given credit for 119 days of the 121 days he claimed as worked outside of New York State by the Income Tax Bureau. The two days disallowed were days worked at home.

6. The petitioner, Arthur D'Arazien, maintains an area of his home which is set aside for his photo work. The petitioner's representative has stated that most of the location work performed by the petitioner is done out of New York State and some of it is done on weekends and evenings. It would be at times impractical, more expensive, time consuming and sometimes impossible for the petitioner, Arthur D'Arazien, to do this work in his New York office.

7. Petitioner, Margaret D'Arazien, performed clerical work and other duties to assist petitioner, Arthur D'Arazien. She performed these services from her home and never performed any of these services in New York State during the year 1972.

#### CONCLUSIONS OF LAW

A. That the two days worked at home in Connecticut during the year 1972 by petitioner, Arthur D'Arazien, were worked there

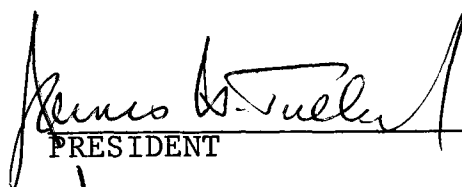
by reason of his necessity and convenience and not for the necessity of his employer and; therefore, said two days must be held to be days worked within New York State in accordance with the meaning and intent of section 632(c) of the Tax Law and NYCRR 131.16.

B. That the wages received by petitioner, Margaret D'Arazien, for the year 1972, is not taxable to New York State within the meaning and intent of Regulation section NYCRR 131.4(b).

C. That the petition of Arthur and Margaret D'Arazien is granted to the extent that the petitioner, Margaret D'Arazien's wages are not taxable by New York State. The Income Tax Bureau is hereby directed to accordingly modify the Notice of Deficiency issued May 19, 1975; and that; except as so granted, the petition is in all other respects denied.

DATED: Albany, New York  
March 4, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER