

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

PASQUALE and PAULINE LA CONTI

AFFIDAVIT OF MAILING

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 ~~(x) or Part of (x)~~ 1971.:

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 Pasquale & Pauline  
LaConti ~~(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. Pasquale LaConti  
120 South Street  
Cresskill, New Jersey 07626

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)~~  
~~(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 Trach



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

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

STATE TAX COMMISSION

ADDRESS YOUR REPLY TO

March 4, 1977

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

Mr. & Mrs. Pasquale LaConti  
120 South Street  
Cresskill, New Jersey 07626

Dear Mr. & Mrs. LaConti:

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

Please take further notice that pursuant to  
Section **(x) 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: ~~Each to Bureau's Representative~~

Taxing Bureau's Representative:

STATE OF NEW YORK  
STATE TAX COMMISSION

---

In the Matter of the Petition :  
of :  
PASQUALE AND PAULINE LA CONTI : DECISION  
for Redetermination of a Deficiency or :  
for Refund of Personal Income Tax under :  
Article 22 of the Tax Law for the Year :  
1971. :

---

Petitioners, Pasquale and Pauline LaConti, residing at 120 South Street, Cresskill, New Jersey 07626, 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 1971 (File No. 1-89180333).

A small claims hearing was held before Philip Mercurio, Small Claims Hearing Officer, on July 13, 1976 at 1:15 P.M. at the offices of the State Tax Commission, Two World Trade Center, New York, New York. The petitioner appeared pro se and for his wife, petitioner, Pauline LaConti. The Income Tax Bureau appeared by Peter Crotty, Esq., (Irwin Levy, Esq., of counsel).

ISSUES

I. Whether income received as a guaranteed annual wage for the year 1971 by the petitioner, Pasquale LaConti, a nonresident, is taxable to New York State?

II. Whether the allocation of wage income used by the petitioners, Pasquale and Pauline LaConti, is correct?

FINDINGS OF FACT

1. Petitioners, Pasquale and Pauline LaConti, filed a New York State nonresident income tax return for the year 1971. They allocated the income received by the petitioner, Pasquale LaConti, based on the days worked within and without New York State. Petitioner, Pasquale LaConti, allocated to out-of-state work the amount of income he received as a guaranteed annual wage.

2. On September 29, 1975, the Income Tax Bureau issued a Statement of Audit Changes against the petitioners, Pasquale and Pauline LaConti, taxing the income received as a guaranteed annual wage to New York State and disallowing the allocation as unsubstantiated. In accordance with the Statement of Audit Changes, the Income Tax Bureau issued a Notice of Deficiency in the sum of \$122.77.

3. The petitioner, Pasquale LaConti, is a longshoreman and a member of the International Longshoremens Association. His services as a longshoreman were performed in New York.

4. For the year 1971 the petitioner, Pasquale LaConti, received from the New York Shipping Association Inc., as a guaranteed wage \$8,523.80 and \$180.00 from the Royalty Fund. He also received \$156.40 while performing services for Cunard Steamship Co. Ltd. in New York.

5. The guaranteed annual wage received by the petitioner, Pasquale LaConti, during 1971, is part of a contract entered into between the Longshoreman's Association and the New York Shipping Association, whereby each longshoreman is guaranteed an annual wage for any particular year, regardless of whether he performs services or not.

6. The New York Shipping Association, Inc. withheld New York State taxes from the income received by the petitioner, Pasquale LaConti, as a guaranteed annual wage.

7. The allocation of wages schedule, as reported on the petitioner's New York State return for the year 1971 was incorrect. The petitioner, Pasquale LaConti, states that he did not allocate the income received by him on days worked within and without New York, but rather on where his services were performed.

CONCLUSIONS OF LAW

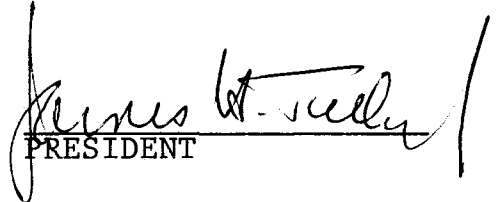
A) That the income received by the petitioner, Pasquale LaConti, during the year 1971, as a guaranteed annual wage is taxable to New York State within the meaning and intent of section 632(b) of the Tax Law.

B) That the allocation used by the petitioners', Pasquale and Pauline LaConti, for the year 1971 is not applicable.

C) That the petition of Pasquale and Pauline LaConti, is denied and the Notice of Deficiency issued on September 29, 1975 is sustained.

DATED: Albany, New York  
March 4, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER