

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
THOMAS P. MARTIN and
RUTH K. MARTIN

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

For a Redetermination of a Deficiency or
a Refund of Unincorporated Business
Taxes under Article 23 of the
Tax Law for the Year 1967.

State of New York
County of Albany

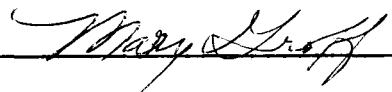
JANET MACK, being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 22nd day of December, 1975, she served the within
Notice of Decision ~~XXXXXXXXXXXX~~ by (certified) mail upon THOMAS P. MARTIN
and RUTH K. MARTIN ~~(XXXXXXXXXXXX)~~ the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mr. and Mrs. Thomas P. Martin
219 West 13th Street
New York, New York 10011

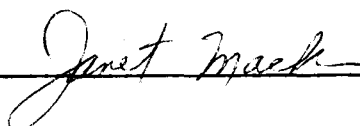
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Post Office Department within the State of New York.

That deponent further says that the said addressee is the ~~XXXXXXXXXXXX~~
~~an~~ petitioner herein and that the address set forth on said wrapper is the last
known address of the ~~(XXXXXXXXXXXX)~~ petitioner.

Sworn to before me this

22nd day of December, 1975





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

THOMAS P. MARTIN and
RUTH K. MARTIN

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

For a Redetermination of a Deficiency or
a Refund of Unincorporated Business :
Taxes under Article (x) 23 of the
Tax Law for the Year (s) 1967.

State of New York
County of Albany

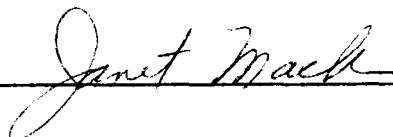
JANET MACK, being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 22nd day of December, 1975, she served the within
Notice of Decision ~~for Determination~~ by (certified) mail upon JEROME ROBBINS
(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mr. Jerome Robbins
41 West 72nd Street
Apartment 12-B
New York, New York 10023
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

22nd day of December, 1975







STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION
HEARING UNIT

PAUL GREENBERG
SECRETARY TO
COMMISSION

STATE TAX COMMISSION

JAMES H. TULLY, JR., PRESIDENT
MILTON KOERNER

BUILDING 9, ROOM 107
STATE CAMPUS
ALBANY, N.Y. 12227

AREA CODE 518

ADDRESS YOUR REPLY TO

Mr. Wright
Mr. Leisner
Mr. Coburn

(518) 457-3850

DATED: Albany, New York
December 22, 1975

Mr. and Mrs. Thomas P. Martin
219 West 13th Street
New York, New York 10011

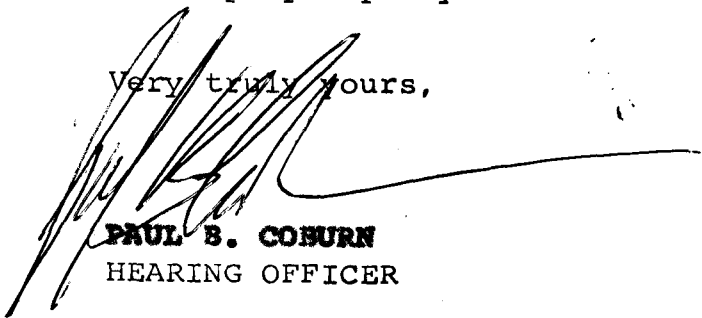
Dear Mr. and Mrs. Martin:

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

Please take further notice that pursuant to
Section (X) **722** 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.

Any 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.
These will be referred to the proper party for
reply.

Very truly yours,


PAUL B. COBURN
HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

AD-1.12 (8/73)

STATE TAX COMMISSION

In the Matter of the Petition :
of :
THOMAS P. MARTIN and RUTH K. MARTIN :
for Redetermination of Deficiency or :
for Refund of Unincorporated Business :
Tax under Article 23 of the Tax Law :
for the Year 1967. :

DECISION

Petitioners, Thomas P. Martin and Ruth K. Martin, residing at 219 West 13th Street, New York, New York 10011, have filed a petition for redetermination of deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the year 1967. (File No. 72201494). A formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on July 23, 1975, at 2:45 P.M. Petitioners appeared by Jerome Robbins. The Income Tax Bureau appeared by Saul Heckelman, Esq., (James Scott, Esq. of counsel).

Did petitioners, Thomas P. Martin and Ruth K. Martin's activities as translators of operas during the year 1967 constitute the practice of a profession?

FINDINGS OF FACT

1. Petitioners, Thomas P. Martin and Ruth K. Martin, filed a New York State combined income tax return for the year 1967. They filed individual New York State unincorporated business tax returns for said year.

2. On October 26, 1970, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, Thomas P. Martin and Ruth K. Martin, imposing unincorporated business tax for the year 1967 upon the income received by them from their activities in translating operas. In computing the tax it treated said income as partnership income. It determined that \$266.80 plus accrued interest was due.

3. On July 25, 1969, petitioner, Thomas P. Martin, filed a claim for credit or refund of unincorporated business tax for the year 1967 in the sum of \$113.72. On said date petitioner, Ruth K. Martin, filed a similar claim in the sum of \$16.64.

4. On November 30, 1970, the Income Tax Bureau denied petitioners, Thomas P. Martin and Ruth K. Martin's claims for refund of unincorporated business tax for the year 1967.

5. Petitioners, Thomas P. Martin and Ruth K. Martin's unincorporated business income was derived from translating operas from Italian, German, French, Russian, Spanish and Czech to English. They also translated operas from English to German. They are among the worlds leading translators of operas. Their translations are published by the leading music publishers such as G. Schirmer.

They have been commissioned by the Metropolitan Opera Company and the New York City Center Opera Company to translate operas. They have been translating operas since 1940. The translation of operas from one language to another requires the rewording of the words so that they fit the music while retaining meaning as expressed in the foreign language.

6. Petitioner, Thomas P. Martin, was born in Vienna, Austria. He attended the Vienna Conservatory of Music. He has worked as the assistant conductor of the Vienna Volks Opera, the St. Louis Opera, the Chicago Opera and the Cincinnati Opera, conductor and chorus master of the New York City Center Opera Company and associate chorus master of the Metropolitan Opera. He is presently Director of Musical Studies and Director of Educational Programs of the New York City Opera State Theater. He is also an adjunct professor at New York University where he teaches a course in operas. He has written articles and lectured on translating operas. He is a member of the American Society of Composers, Authors and Publishers.

7. Petitioner, Ruth K. Martin, attended the Bergen School for Girls at Jersey City, New Jersey, where she studied French and Latin. She was also tutored in French and German. Upon graduation she attended a French speaking school in Lausanne, Switzerland where she learned French, German and Italian. She then attended Smith

College for four years where she majored in music. She studied German for one summer at Columbia University and music and opera at the University of Munich for one summer. From 1935 to 1938 she spent the summers studying music in Europe and covering music festivals for the New York Times. She has written articles and lectured on translating operas. She is a member of the American Society of Composers, Authors and Publishers.

8. Petitioners, Thomas P. Martin and Ruth K. Martin's income as translators of operas during the year 1967 was derived solely from personal services rendered. Capital was not a material income producing factor.

CONCLUSIONS OF LAW

A. That petitioners, Thomas P. Martin and Ruth K. Martin's activities as translators of operas during the year 1967 constituted 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. Tannenbaum v. State Tax Commission, 1975, 46 A.D. 2d 400, 362 N.Y.S. 2d 608.

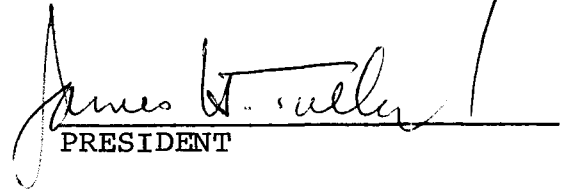
B. That the petition of Thomas P. Martin and Ruth K. Martin is granted; the Statement of Audit Changes issued October 26, 1970,

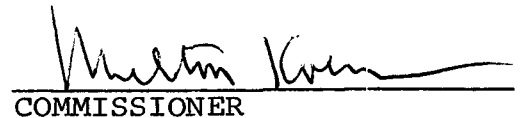
- 5 -

is cancelled and a refund in the total sum of \$130.36 is granted together with such interest as may be lawfully owing.

DATED: Albany, New York
December 22, 1975

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER

COMMISSIONER