

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

AUGUSTINE A. & JOSEPHINE A. MENNELLA:

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund  
of Unincorporated Business & Personal Income  
Taxes under Article(s) 22 & 23 of the  
Tax Law for the Year(s) ~~XXXXXX~~ :  
1968, 1969 and 1970

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 27 day of April , 19 77, ~~He~~ served the within

Notice of Decision by (certified) mail upon Augustine A. &

Josephine A. Mennella ~~(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. Augustine A. Mennella  
16 Cedar Street  
Floral Park, New York 11001

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)~~  
~~XXXXXX~~ 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

27 day of April , 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

April 27, 1977

ADDRESS YOUR REPLY TO

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

Mr. & Mrs. Augustine A. Mennella  
16 Cedar Street  
Floral Park, New York 11001

Dear Mr. & Mrs. Mennella:

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

Please take further notice that pursuant to  
Section(s) **690 & 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.

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*

FRANK J. PUCCIA

Supervisor of  
Small Claims Hearings

Enc.

cc: ~~Not to be used for dissemination~~

Taxing Bureau's Representative:

## STATE TAX COMMISSION

Petitioners, Augustine A. and Josephine A. Mennella, residing at 16 Cedar Street, Floral Park, New York 11001, have filed a petition for redetermination of a deficiency or for refund of personal income and unincorporated business taxes under Articles 22 and 23 of the Tax Law for the years 1968, 1969 and 1970. (File No. 0-58883483).

A small claims hearing was held before Philip Mercurio, Small Claims Hearing Officer, on August 18, 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 pro se and for his wife, petitioner, Josephine A. Mennella. The Income Tax Bureau appeared by Peter Crotty, Esq., (Frank Levitt, Esq. of counsel).

Whether the income received by the petitioner, Augustine A. Mennella, from his insurance brokerage and accounting activities was subject to unincorporated business tax for the years 1968, 1969 and 1970.

FINDINGS OF FACT

1. Petitioners, Augustine A. and Josephine A. Mennella, filed a New York State resident income tax return for the year 1968, and amended New York State resident income tax returns for the years 1969 and 1970. Petitioner, Augustine A. Mennella, did not timely file New York State unincorporated business tax returns for the years 1968, 1969 and 1970.

2. On March 26, 1973, the Income Tax Bureau issued a Statement of Audit Changes against the petitioners, Augustine A. and Josephine A. Mennella, imposing unincorporated business tax on the grounds that the activities of the petitioner, Augustine A. Mennella, constituted the carrying on of an unincorporated business. The Income Tax Bureau also made adjustments on their New York State personal income tax returns for the years 1969 and 1970. The Income Tax Bureau also assessed a section 685(a) penalty for failure to file an unincorporated business tax return for the year 1968 and penalties under sections 685(a)(1) and (2) for failure to file and pay unincorporated business tax for 1969 and 1970. In accordance with the aforesaid Statement of Audit Changes it issued a Notice of Deficiency in the sum of \$2,003.08.

3. Petitioners, Augustine A. and Josephine A. Mennella, submitted amended 1969 and 1970 New York State personal income tax returns together with the payment of tax and interest thereon. Petitioner, Augustine A. Mennella, also submitted copies of New York State unincorporated business tax returns for 1968, 1969 and 1970, all of which were dated September 23, 1973. He included on such unincorporated

business tax returns the income he received from his insurance brokerage activities but he omitted the income he received from his accounting activities.

4. Petitioner, Augustine A. Mennella, operated an insurance and accounting business during the years 1968, 1969 and 1970. On the unincorporated business tax returns submitted by petitioner, Augustine A. Mennella, he reported total gross income for the years 1968, 1969 and 1970 of \$20,904.00, \$25,142.00 and \$27,463.00, respectively. Of the total gross income reported for the years in question, \$11,960.00, \$14,770.00 and \$15,305.00 represented the respective amounts of gross income attributable to his accounting activities.

5. The petitioner, Augustine A. Mennella, is enrolled as a public accountant with the State of New York Education Department and is duly enrolled to practice before the Internal Revenue Service. His accountancy business consisted of single entry bookkeeping services and income tax preparation. The petitioner, Augustine A. Mennella, does not have a degree in accountancy. He is also a licensed insurance broker.

6. During the years 1968, 1969 and 1970, petitioner, Augustine A. Mennella, asserted that he keep separate records pertaining to the income received from his insurance brokerage and accounting activities. He further stated that he maintained four bank accounts, brokerage, agent New York Central Mutual, special account (which he used to transfer commissions from

the Brokerage and New York Central accounts), and a tax account. The petitioner, Augustine A. Mennella, was given an opportunity to submit additional documentary evidence to verify his assertions that he did maintain separate records pertaining to each activity. However, in lieu of this documentary evidence, petitioner submitted a letter dated August 23, 1976 indicating that he could not locate such documentary evidence.

CONCLUSIONS OF LAW

A. That the accountancy activities of the petitioner, Augustine A. Mennella, during the years 1968, 1969 and 1970 constituted the practice of an exempt profession within the meaning and intent of section 703(c) of the Tax Law.

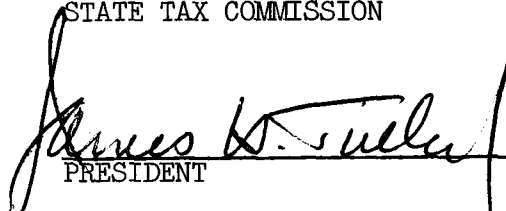
B. That the insurance brokerage activities of the petitioner, Augustine A. Mennella, during the years 1968, 1969 and 1970 constituted the carrying on of an unincorporated business within the meaning and intent of section 703 of the Tax Law.

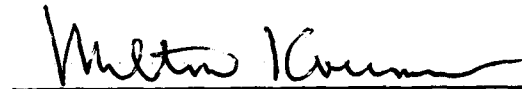
C. That petitioner, Augustine A. Mennella, has not shown the portion of his total gross business income for the years 1968, 1969 and 1970 attributable to the practice of accountancy and, therefore, all of petitioner's business income for the years in question is subject to unincorporated business tax.

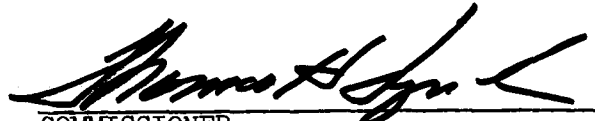
D. That the petition of Augustine A. and Josephine A. Mennella is granted to the extent of cancelling the deficiency of personal income tax asserted against them for the years 1969 and 1970 as amended New York State returns were filed for such years together with the payment of tax and interest due of \$113.07. The Income Tax Bureau is hereby directed to accordingly modify the Notice of Deficiency dated March 26, 1973 and except as so granted the petition is in all other respects denied.

DATED: Albany, New York  
April 27, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER