

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

DOMINIC STIGI

DECISION

for Redetermination of a Deficiency or for
Refund of New York State Personal Income Tax :
under Article 22 of the Tax Law and New York
City Personal Income Tax under Chapter 46,
Title T of the Administrative Code of the City
of New York for the Period January 1, 1978
through December 31, 1978.

Petitioner, Dominic Stigi, 292 Whitman Drive, Brooklyn, New York 11234,
filed a petition for redetermination of a deficiency or for refund of New York
State personal income tax under Article 22 of the Tax Law and New York City
personal income tax under Chapter 46, Title T of the Administrative Code of the
City of New York for the period January 1, 1978 through December 31, 1978 (File
No. 48116).

A hearing was held before James Hoefer, Hearing Officer, at the offices of
the State Tax Commission, Two World Trade Center, New York, New York, on
August 20, 1985 at 2:45 P.M., with all briefs to be submitted by October 20,
1985. Petitioner appeared by Milton Weinstein, C.P.A. The Audit Division
appeared by John P. Dugan, Esq. (Irwin Levy, Esq., of counsel).,

ISSUE

Whether petitioner was a person required to collect, truthfully account
for and pay over the New York State and City withholding taxes of Romulus
Furniture Corp. and who willfully failed to do so and therefore, is subject to
a penalty equal to such unpaid withholding taxes.

FINDINGS OF FACT

1. On July 25, 1983, the Audit Division issued a Statement of Deficiency ("Statement") to petitioner, Dominic Stigi, asserting that he was a person required to collect, truthfully account for and pay over the New York State and City withholding taxes of Romulus Furniture Corp. ("Romulus") for the year 1978. The aforementioned Statement further alleged that petitioner willfully failed to collect, truthfully account for and pay over said withholding taxes and that he was therefore subject to a penalty equal in amount to the unpaid withholding taxes of \$4,232.06. Accordingly, on July 23, 1983, the Audit Division issued a Notice of Deficiency to petitioner for the year 1978 asserting a deficiency of \$4,232.06.

2. During the year at issue, petitioner was Secretary-Treasurer of Romulus; however, he owned none of its stock nor did he make any loans to or investments in said corporation. One Frank Leone, Sr. was the sole shareholder and President of Romulus. When Romulus was incorporated in 1964, petitioner became an officer of the corporation solely as an accommodation to Mr. Leone.

3. Petitioner was employed on a full-time basis by Romulus as its sales manager. Mr. Stigi was authorized to sign checks on behalf of Romulus; however, he did so only in Mr. Leone's absence and only for that merchandise which had to be paid for upon delivery. Furthermore, Mr. Leone would, prior to any known absences, advise Romulus' bookkeeper of those deliveries which were expected to be made during his absence and he also instructed said bookkeeper to draft a check and present it to petitioner for signature upon delivery of the merchandise. Petitioner did not determine which creditors of the corporation were to be paid and he was not involved in any of Romulus' administrative or financial functions.

4. Mr. Stigi was not involved in the hiring or firing of employees nor did he ever sign any tax returns on behalf of the corporation. Petitioner was not responsible for the collection and/or payment of Romulus' withholding taxes and he first became aware that Romulus had not remitted its proper withholding taxes upon his receipt of the aforementioned Statement of Deficiency and Notice of Deficiency.


CONCLUSIONS OF LAW

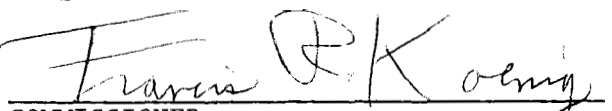
A. That petitioner was not a "person", as described in Tax Law §685(n) and Administrative Code §T46-185.0(n), required to collect, truthfully account for and pay over the New York State and City withholding taxes of Romulus. Petitioner did not determine which creditors were to be paid, did not sign tax returns, was not responsible for the collection and/or payment of withholding taxes, did not hire or fire employees and was not a shareholder in the corporation. Mr. Stigi was named an officer of Romulus solely as an accommodation to Mr. Leone and he signed corporate checks only in Mr. Leone's absence. Accordingly, petitioner is not liable for the penalty imposed pursuant to Tax Law §685(g) and Administrative Code §T46-185.0(g).


B. That the petition of Dominic Stigi is granted and the Notice of Deficiency dated July 25, 1983 is hereby cancelled.

DATED: Albany, New York

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER