

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition

of

BALAKRISHNAN ROMANATHAN

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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 July 1, 1979 through :  
December 31, 1979.

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Petitioner, Balakrishnan Romanathan, 171 Harris Drive, Oceanside, New York 11572, 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 July 1, 1979 through December 31, 1979 (File No. 57670).

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 January 14, 1986 at 9:15 A.M. Petitioner appeared pro se. 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 Quadratach Research 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 September 24, 1984, the Audit Division issued a Statement of Deficiency ("Statement") to petitioner, Balakrishnan Romanathan, asserting that he was a person required to collect, truthfully account for and pay over the New York State and City withholding taxes of Quadratesch Research Corp. ("Quadratesch") for the period July 1, 1979 through December 31, 1979. 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 \$2,327.10. Accordingly, on September 24, 1984, the Audit Division issued a Notice of Deficiency to petitioner for the year 1979 asserting a deficiency of \$2,327.10.

2. During the period at issue, petitioner was Secretary-Treasurer of Quadratesch, however, he owned none of its stock nor did he make any loans to or investments in said corporation. One Frederick E. Barrett was the sole shareholder and President of Quadratesch. Petitioner became an officer of Quadratesch solely as an accommodation to Mr. Barrett.

3. Petitioner was employed on a full-time basis by Quadratesch as an electrical engineer. Petitioner's duties involved bidding on government contracts and overseeing those contracts which were awarded to Quadratesch from start to finish. Mr. Romanathan was authorized to sign checks on behalf of Quadratesch, however, he did so only in Mr. Barrett's absence. Petitioner had no authority to determine which creditors of Quadratesch were to be paid nor was he involved in the hiring or firing of employees.

4. Quadratesch secured many of its government contracts through the Small Business Administration ("SBA") and had received a start up loan from the SBA

of approximately \$175,000.00. As the result of a contractual agreement with the SBA, all checks drafted by Quadratech had to be signed either by petitioner or Mr. Barrett and also required a second signature by a representative from the SBA. Sometime in 1979, Mr. Barrett and the SBA encountered serious disputes and, as the result of said disputes, the SBA would no longer co-sign any checks drafted by Quadratech. At this point in time, Mr. Barrett ordered petitioner not to sign any checks without his approval and specifically ordered petitioner not to pay the past due withholding taxes in dispute herein.

5. The Internal Revenue Service questioned petitioner with respect to his responsibility for payment of Quadratech's past due Federal withholding and social security taxes. As the result of its investigation, the Internal Revenue Service determined that petitioner was not a person responsible for the collection and payment of Quadratech's Federal taxes.

#### 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 Quadratech. Petitioner did not determine which creditors were to be paid, did not hire or fire employees and was not a shareholder or investor in the corporation. Mr. Romanathan was named an officer of Quadratech solely as an accommodation to Mr. Barrett and he signed corporate checks only in Mr. Barrett'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 Balakrishnan Romanathan is granted and the Notice of Deficiency dated September 24, 1984 is hereby cancelled.

DATED: Albany, New York

STATE TAX COMMISSION

APR 28 1986

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER