

McQuade
P.I. - 1970

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
:
of
:
KENNETH McQUADE
:
For a Redetermination of a Deficiency or
a Refund of Personal Income
Taxes under Article(s) 22 of the
Tax Law for the (Year(s) 1962 :

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

*Decision
cc H
99-324*

State of New York
County of Albany

Linda Wilson , 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 29th day of December , 19 70, she served the within Notice of Decision (or Determination) by (certified) mail upon KENNETH McQUADE (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mr. Kenneth McQuade 215 Martling Avenue Staten Island, New York

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

29th day of December , 1970
Martha Luxaro

Linda Wilson

STATE OF NEW YORK
STATE TAX COMMISSION

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State of New York
County of Albany

Linda Wilson, 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 29th day of December, 1970, she served the within Notice of Decision (or Determination) by (certified) mail upon KENNETH McQUADE

(representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mr. Philip J. Fitzpatrick, Esq. of Marchi and Ahern, Esqs. 711 Forest Avenue Staten Island, New York

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

29th day of December, 1970.

Bartha Sunaro

Linda Wilson

STATE OF NEW YORK

STATE TAX COMMISSION

IN THE MATTER OF THE PETITION :
OF :
KENNETH McQUADE :
FOR A REDETERMINATION OF A DEFICIENCY :
OR FOR REFUND OF PERSONAL INCOME TAXES :
UNDER ARTICLE 22 OF THE TAX LAW FOR :
THE YEAR 1962 :

Kenneth McQuade having filed a petition for redetermination of deficiency or for refund of personal income taxes under Article 22 of the Tax Law for the year 1962 (File No. 13 1911 473), and a hearing having been held on June 29, 1967 at 80 Centre Street, New York, New York, before Alfred Rubinstein, Hearing Officer of the Department of Taxation and Finance, at which hearing the taxpayer, Kenneth McQuade and his representative, Philip J. Fitzpatrick, Esq. of Marchi and Ahern, Esqs. appeared and the matter having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That during 1962 Woodstock Associates, Inc. was engaged in the business of operating a hotel in New York; that at that time the taxpayer was the Secretary-Treasurer of the corporation, engaged in the active management of its business; that the taxpayer, as a corporate officer, withheld taxes from the salaries and wages of the corporation's employees in the sums of \$324.70 for the quarter ended June 30, 1962, \$321.70 for the quarter ended September 30, 1962 and \$331.40 for the quarter ended December 31, 1962; that said sums were held as trust funds by the taxpayer for payment over to the State of New York; that the taxpayer knew and was aware of his and the corporation's obligation to pay over such trust funds; that the

taxpayer failed to pay over such withheld taxes.

(2) That the assets of Woodstock Associates, Inc. were sold and disposed of to a purchaser for value in 1963; that the sum of \$35,000 in cash and a series of promissory notes in addition thereto were received as consideration by the corporation; that the taxpayer, as Secretary-Treasurer of the corporation, has failed to account for the cash and notes received on the sale or to furnish any information as to disposition of the same; that on February 19, 1965 a notice of deficiency and assessment was issued against the taxpayer, in an amount equal to the taxes withheld, and not paid over; that the taxpayer filed a petition for redetermination or refund of the deficiency asserted against him on May 18, 1965.

Based upon the foregoing findings and all of the evidence presented herein, the State Tax Commission hereby,

DECIDES:

(A) That in 1962 Woodstock Associates, Inc. deducted and withheld from the salaries of its employees taxes due to the State of New York in the sum of \$977.80; that such withheld taxes were held by the taxpayer as trust funds; that the taxpayer, as Secretary-Treasurer of the corporation knowingly failed to pay over such withheld taxes; that no legal excuse or justification for such failure to pay over withheld taxes has been shown to exist; that such failure to pay over withheld taxes was willful on the part of the taxpayer; that the taxpayer is a person liable for payment of such taxes under the Tax Law.

(B) That, and accordingly, the amount set forth in the notice of deficiency and assessment imposed against the taxpayer is correct and is due and owing, together with interest and other statutory charges; that such amount does not include any tax or

other charge which could not have been lawfully demanded, and that taxpayer's petition for redetermination or refund with respect thereto be and the same is denied.

DATED: Albany, New York this 23rd day of December, 1970.

STATE TAX COMMISSION

Wopman Gellman

PRESIDENT

Bruce Nauley

COMMISSIONER

Milton Koenig

COMMISSIONER