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STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

MICHAEL MASINO

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) 1967 & 1968. :

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

State of New York
County of Albany

Lynn 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 25th day of July , 1973, she served the within
Notice of Decision (or Determination) by (certified) mail upon MICHAEL MASINO

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: Mr. Michael Masino
124 Willard Avenue
South Farmingdale, New York 11735

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

25th day of July , 1973

Jantha Durazo

Lynn Wilson

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

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she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 25th day of July , 1973 , she served the within
Notice of Decision (or Determination) by (certified) mail upon JOSEPH M.
PARROTTA, ESQ. (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Joseph M. Parrotta, Esq.

198 Irving Avenue
Brooklyn, New York 11237

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

25th day of July , 1973

Martha Xunaro

Lynn Wilson



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A

STATE CAMPUS

ALBANY, N. Y. 12226

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

STATE TAX COMMISSION

NORMAN F. GALLMAN, ACTING PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

ADDRESS YOUR REPLY TO

DATED: Albany, New York
July 25, 1973

Mr. Michael Masino
124 Willard Avenue
South Farmingdale, New York 11735

Dear Mr. Masino:

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

Please take further notice that pursuant to
Section(s) **690** 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 E. Coburn
HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
MICHAEL MASINO	:	DECISION
for Redetermination of Deficiency or	:	
for Refund of Personal Income Tax	:	
under Article 22 of the Tax Law for	:	
the Years 1967 and 1968.	:	

Petitioner, Michael Masino, has filed a petition for redetermination of deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1967 and 1968. (File No. 11-2123194). A formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York, on April 25, 1973, at 2:45 P.M. Petitioner appeared pro se. The Income Tax Bureau appeared by Saul Heckelman, Esq. (Francis X. Boylan, Esq., of Counsel).

ISSUE

Is petitioner, Michael Masino, liable for unpaid New York State withholding taxes due from Elevator Components, Inc. for the years 1967 and 1968?

FINDINGS OF FACT

1. Elevator Components, Inc. failed to pay over to the Income Tax Bureau New York State personal income taxes withheld from its employees for the years 1967 and 1968 in the sum of \$3,278.72. The corporation is presently defunct.

2. On March 30, 1970, the Income Tax Bureau issued a Statement of Deficiency against petitioner, Michael Masino, imposing a penalty equal to the amount of New York State withholding taxes due from Elevator Components, Inc. for the years 1967 and 1968 upon the grounds that he was a person required to collect, truthfully account for and pay over said taxes and that he willfully failed to do so. It accordingly issued a Notice of Deficiency against him in the sum of \$3,278.72.

3. Petitioner, Michael Masino, was a stockholder of Elevator Components, Inc. during the years 1967 and 1968. He owned one sixth of the stock of the corporation. He was vice president, treasurer and a director of the corporation during the period from January 1, 1967 through May 24, 1968. He formally resigned from these positions on May 24, 1968. During the period from January 1, 1967 through March 13, 1968, he worked principally as plant foreman for the corporation. He signed corporation checks. On March 13, 1968, he left the employ of the corporation and went to work for the Republic Aviation Division of Fairchild Hiller Corporation in Farmingdale, New York. He refused to sign checks of the corporation after March 13, 1968.

4. The total amount of withholding taxes due from Elevator Components, Inc. for the period from April 1, 1968 to December 31, 1968, was \$1,505.04.

CONCLUSIONS OF LAW

A. That petitioner, Michael Masino, was a person required to collect, truthfully account for and pay over New York State

withholding taxes due from Elevator Components, Inc. for the taxable periods from January, 1967 through March, 1968 in accordance with the meaning and intent of sections 674 and 685(1) of the Tax Law.

B. That since petitioner, Michael Masino, willfully failed to collect, truthfully account for and pay over New York State withholding taxes due from Elevator Components, Inc. for the taxable periods from January, 1967 through March, 1968; therefore, he was liable for a penalty equal to the amount of unpaid withholding taxes of \$1,773.68 due from said corporation for said periods in accordance with the meaning and intent of section 685(g) of the Tax Law.

C. That since petitioner, Michael Masino, terminated his active employment with Elevator Components, Inc. in March, 1968, therefore, he was not a person required to collect, truthfully account for and pay over New York State withholding taxes of said corporation in the sum of \$1,505.04, nor did he willfully fail to do so, for the taxable periods from April, 1968 through December, 1968 in accordance with the meaning and intent of sections 674, 685(1) and 685(g) of the Tax Law.

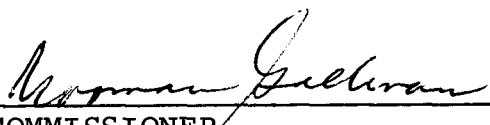
D. That the petition of Michael Masino is granted to the extent of reducing the penalty assessed pursuant to section 685(g) of the Tax Law for the years 1967 and 1968 from \$3,278.72 to \$1,773.68; that the Income Tax Bureau is hereby directed to

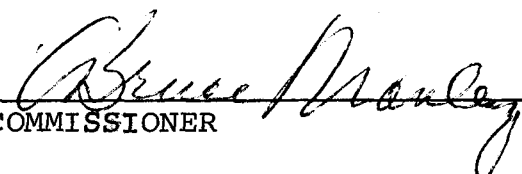
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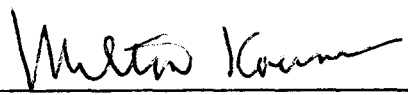
accordingly modify the Notice of Deficiency issued March 30, 1970, and, that except as so granted, the petition is in all other respects denied.

DATED: Albany, New York
July 25, 1973

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER