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STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ANGELO PETRINA & LEONARD J. MARTIN

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) 1968 & 1969. :

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 24th day of July , 1973 , she served the within Notice of Decision (or Determination) by (certified) mail upon ANGELO PETRINA

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

wrapper addressed as follows: Mr. Angelo Petrina
1 Auburn Lane
Hicksville, New York 11801

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

24th day of July , 1973.

Martha J. [Signature]

Lynn Wilson

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ANGELO PETRINA & LEONARD J. MARTIN

For a Redetermination of a Deficiency or
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Tax Law for the (Year(s) 1968 & 1969. :

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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 24th day of July , 1973, she served the within Notice of Decision (or Determination) by (certified) mail upon LEONARD J.

MARTIN (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mr. Leonard J. Martin
38 Orchard Neck Rd.
Center Moriches, 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

24th day of July , 1973.

Frank J. Scurro

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, ~~XXXX~~ PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

ADDRESS YOUR REPLY TO

DATED: Albany, New York
July 24, 1973

Mr. Angelo Petrina
1 Auburn Lane
Hicksville, New York 11801

Dear Mr. Petrina:

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 B. Coburn
HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petitions :
of :
ANGELO PETRINA and :
LEONARD J. MARTIN : DECISION
for Redetermination of Deficiency or :
for Refund of Personal Income Tax :
under Article 22 of the Tax Law for :
the Years 1968 and 1969. :

Petitioners, Angelo Petrina and Leonard J. Martin, have filed petitions for redetermination of deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1968 and 1969. (File No. 11-2077273). 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 March 1, 1973, at 1:30 P.M. Petitioners appeared pro se. The Income Tax Bureau appeared by Saul Heckelman, Esq., (Solomon Sies, Esq., of Counsel).

ISSUE

Were petitioners, Angelo Petrina and Leonard J. Martin, liable for unpaid New York State withholding taxes due from Sound Electronics Corp. for the period January 1, 1968, through February 21, 1969?

FINDINGS OF FACT

1. Sound Electronics Corp. failed to pay over to the Income Tax Bureau New York State personal income taxes withheld from

its employees for the period from January 1, 1968, through February 21, 1969, in the sum of \$1,674.93. The corporation filed an assignment for the benefit of creditors on or about February 21, 1969. The Income Tax Bureau has not received any payments in the assignment proceedings. The corporation is presently defunct.

2. On January 26, 1970, the Income Tax Bureau issued a Statement of Deficiency against petitioner, Angelo Petrina, equal to the amount of New York State withholding due from Sound Electronics Corp. for the period from January 1, 1968, through February 21, 1969, 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 \$1,674.93.

3. On April 22, 1970, the Income Tax Bureau issued a Statement of Deficiency against petitioner, Leonard J. Martin, equal to the amount of New York State withholding taxes due from Sound Electronics Corp. for the period from January 1, 1968, through February 21, 1969, 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 \$1,674.93.

4. Petitioner, Angelo Petrina, was president of Sound Electronics Corp. from June, 1968, through February 21, 1969. He acted as chief executive officer. He managed the entire operation. He supervised the sales and production phases of

the business, hired and fired personnel, supervised payroll operations, signed checks and signed tax returns. In June, 1968, he acquired 51% of the stock of Sound Electronics Corp. He invested \$30,000.00 in the corporation. He served as a director of the corporation.

5. Petitioner, Angelo Petrina, did not have any interest in or relationship with Sound Electronics Corp. prior to June, 1968.

6. The total amount of unpaid withholding taxes due from Sound Electronics Corp. for the first quarter of 1968 was \$308.00.

7. Petitioner, Leonard J. Martin, became vice president of Sound Electronics Corp. at the time it was incorporated in 1965. He owned approximately 15% of the stock of the corporation. He invested approximately \$2,000.00 in the corporation. He resigned as vice president and was elected secretary of the corporation in June, 1968. He resigned as secretary and was elected vice president of the corporation in December, 1968. He served as vice president of the corporation from December, 1968, until February 21, 1969. He received a salary of \$10,000.00 a year during the period January 1, 1968, through February 21, 1969. He was not a director of the corporation. He signed checks of the corporation prior to June, 1968, and subsequent to December 9, 1968. His primary function was to sell the products manufactured by the corporation. However,

he served as an operational officer in the absence of the president. He was aware of the financial difficulties of the corporation. He did not sign any corporate tax returns. He conceded at the formal hearing that he was a responsible officer of the corporation.

CONCLUSIONS OF LAW

A. That petitioner, Angelo Petrina, as an officer of Sound Electronics Corp. was a person required to collect, truthfully account for and pay over New York State withholding taxes due from said corporation for the period from June 1, 1968, through February 21, 1969, in accordance with the meaning and intent of sections 674 and 685(1) of the Tax Law.

B. That since petitioner, Angelo Petrina, willfully failed to collect, truthfully account for and pay over New York State withholding taxes due from Sound Electronics Corp. for the period June 1, 1968, through February 21, 1969, therefore, he was subject to a penalty equal to the amount of unpaid withholding taxes due and payable during said period in accordance with the meaning and intent of section 685(g) of the Tax Law.

C. That petitioner, Angelo Petrina, was not liable for unpaid withholding taxes due from Sound Electronics Corp. for the first quarter of 1968 since he was not associated with the corporation during the period said taxes became due and payable.

D. That petitioner, Leonard J. Martin, as an officer of Sound Electronics Corp. was a person required to collect, truthfully account for and pay over New York State withholding taxes due from said corporation for the period January 1, 1968, through

February 21, 1969, in accordance with the meaning and intent of sections 674 and 685(1) of the Tax Law.

E. That since petitioner, Leonard J. Martin, willfully failed to collect, truthfully account for and pay over New York State withholding taxes due from Sound Electronics Corp. for the period January 1, 1968, through February 21, 1969, therefore, a penalty equal to the total amount of the unpaid withholding taxes was properly assessed against him in accordance with the meaning and intent of section 685(g) of the Tax Law.

F. That the petition of Angelo Petrina is granted to the extent of reducing the Notice of Deficiency issued January 26, 1970, from \$1,674.93 to \$1,366.93 and that, except as so granted, the petition is in all other respects denied.

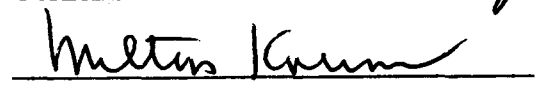
G. That the petition of Leonard J. Martin is denied and the Notice of Deficiency issued April 22, 1970, is sustained.

DATED: Albany, New York
July 24, 1973

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER