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STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JOSEPH L. LAZAR and DANTE V. RUSSO

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

For a Redetermination of a Deficiency or
a Refund of Personal Income
Taxes under Article ~~(3)~~ 22 of the
Tax Law for the Year ~~(3)~~ 1964

State of New York
County of Albany

Janet Mack , 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 4th day of November , 19 74, she served the within
Notice of Decision (or Determination) by (certified) mail upon Joseph L. Lazar

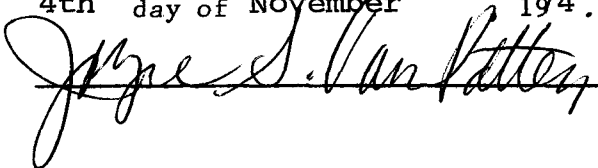
~~(representative of)~~ the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid

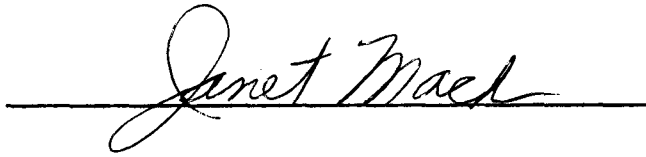
wrapper addressed as follows: Mr. Joseph L. Lazar
Route 106
RFD #1

Muttontown, 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
4th day of November 1974.





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JOSEPH L. LAZAR & DANTE V. RUSSO

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)~~ 1964

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

State of New York
County of Albany

Janet Mack, 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 4th day of November, 1974, she served the within Notice of Decision (or Determination) by (certified) mail upon Dante V. Russo

~~(representative of)~~ the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mr. Dante V. Russo

91 Biarritz Street
Lido Beach, 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

4th day of November 1974

Joseph L. Van Patten

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JOSEPH L. LAZAR and DANTE V. RUSSO

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

For a Redetermination of a Deficiency or
a Refund of Personal Income
Taxes under Article ~~(3)~~ 22 of the
Tax Law for the Year ~~(1963)~~ 1964

State of New York
County of Albany

Janet Mack , 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 4th day of November , 1974 , she served the within Notice of Decision (or Determination) by (certified) mail upon Lester D. Janoff, Esq.

(representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Lester D. Janoff, Esq.

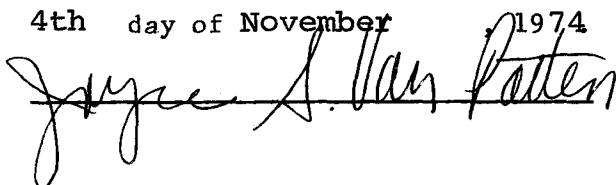
551 Fifth Avenue
New York, New York

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

4th day of November , 1974



Joyce S. Van Patten



Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

STATE TAX COMMISSION

BUILDING 9, ROOM 214-A
STATE CAMPUS
ALBANY, N.Y. 12227

AREA CODE 518

ADDRESS YOUR REPLY TO

MARIO A. PROCACCINO, PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

MR. WRIGHT 457-2655
MR. LEISNER 457-2657
MR. COBURN 457-2896

DATED: Albany, New York
November 4, 1974

Mr. Joseph L. Lazar
Route 106
RFD #1
Muttontown, New York

Dear Mr. Lazar:

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

Please take further notice that pursuant to
Section (a) **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
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

STATE TAX COMMISSION

BUILDING 9, ROOM 214-A
STATE CAMPUS
ALBANY, N.Y. 12227

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MILTON KOERNER

AREA CODE 518

ADDRESS YOUR REPLY TO

MR. WRIGHT 457-2655
MR. LEISNER 457-2657
MR. COBURN 457-2896

DATED: Albany, New York
November 4, 1974

Mr. Dante V. Russo
91 Biarritz Street
Lido Beach, New York

Dear Mr. Russo:

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of the State Tax Commission enclosed herewith.

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Section (a) **690** of the Tax Law, any
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Very truly yours,

Paul B. Coburn
HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

AD-1.12 (8/73)

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petitions :
of :
JOSEPH L. LAZAR and DANTE V. RUSSO : DECISION
for Redetermination of Deficiency or :
for Refund of Personal Income Tax under :
Article 22 of the Tax Law for the Year :
1964. :

Petitioners, Joseph L. Lazar and Dante V. Russo, have filed petitions for redetermination of deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1964. (File No. 11-1515-251). 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 September 20, 1973, at 2:45 P.M. Petitioner, Joseph L. Lazar, appeared by Lester D. Janoff, Esq. Petitioner, Dante V. Russo, appeared by John Spuches, Esq. The Income Tax Bureau appeared by Saul Heckelman, Esq., (James A. Scott, Esq., of counsel).

ISSUE

Are petitioners, Joseph L. Lazar and Dante V. Russo, liable for unpaid New York State withholding taxes due from Main Ship Repair Corporation for the period from March 1, 1964 through April 30, 1964?

FINDINGS OF FACT

1. Main Ship Repair Corporation failed to pay over to the Income Tax Bureau, New York State personal income taxes withheld from its employees for the months of March and April, 1964, in the total sum of \$11,668.57. The corporation is presently defunct.

2. On December 6, 1967, the Income Tax Bureau issued statements of deficiency against petitioners, Joseph L. Lazar and Dante V. Russo, imposing penalties equal to the amount of New York State withholding taxes due from Main Ship Repair Corporation for the months of March and April, 1964, upon the grounds that they were persons required to collect, truthfully account for and pay over said taxes and that they willfully failed to do so. In accordance with the aforesaid statements of deficiency, it issued notices of deficiency against them in the sum of \$11,668.57.

3. Petitioner, Dante V. Russo, was president, a director and a 50% stockholder of Main Ship Repair Corporation during the months of March and April, 1964. He signed corporate checks and tax returns, including the employers' monthly return of New York State personal income tax withheld for the month of March, 1964, which return was filed without payment. He played an active role in the management of the affairs of the corporation.

4. On April 22, 1964, Main Ship Repair Corporation executed an assignment to the Income Tax Bureau of accounts receivable in excess of \$60,000.00 allegedly due from the United States Navy for repair work performed by the corporation at the naval shipyard

in Brooklyn, New York. The proceeds realized were to be used to pay the corporation's withholding tax liability. The Income Tax Bureau never received any payments on account of said receivables from the United States Navy, although the Bureau inquired about payment in April, 1965.

5. Petitioner, Joseph L. Lazar, resigned as secretary and a director of Main Ship Repair Corporation on February 19, 1964. He was not actively involved in the business affairs of the corporation after that date, although he continued to own 50% of the stock of the corporation. He never attended any stockholders or directors meetings. He never signed any corporate checks or tax returns.

CONCLUSIONS OF LAW

A. That petitioner, Dante V. Russo, as president and as an active officer of Main Ship Repair Corporation was a person required to collect, truthfully account for and pay over New York State withholding taxes due from said corporation for the months of March and April, 1964, in accordance with the meaning and intent of section 674 and former section 685(1) of the Tax Law. The fact that in April, 1964 the corporation may have assigned receivables to the Income Tax Bureau when it was unable to meet its withholding tax obligations and the fact that said Bureau may not have made an effort to collect said receivables until April, 1965, does not relieve him of his liability under the aforesaid section.

B. That since petitioner, Dante V. Russo, willfully failed to collect, truthfully account for and pay over New York State withholding taxes due from Main Ship Repair Corporation for the months of March and April, 1964, therefore a penalty equal to the 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.


C. That petitioner, Joseph L. Lazar, was not a responsible officer who willfully failed to collect, truthfully account for and pay over New York State withholding taxes due from Main Ship Repair Corporation for the months of March and April, 1964, and therefore, a penalty equal to the amount of unpaid withholding taxes should not have been assessed against him in accordance with the meaning and intent of sections 674 and 685(g) and former section 685(1) of the Tax Law.

D. That the petition of Dante V. Russo is denied and the Notice of Deficiency issued against him on December 6, 1967, is sustained.


E. That the petition of Joseph L. Lazar is granted and the Notice of Deficiency issued against him on December 6, 1967, is cancelled.

DATED: Albany, New York
November 4, 1974

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER