

POOR  
QUALITY  
THE FOLLOWING  
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ARE  
FADED & BLURRED

PHOTO MICROGRAPHICS INC.

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

JOSEPH P. SMITH and  
SAMUEL A. COSTELLO

For a Redetermination of a Deficiency or  
a Refund of Personal Income  
Taxes under Article (8) 22 of the  
Tax Law for the Year (8) 1968.

AFFIDAVIT OF MAILING  
OF NOTICE OF DECISION  
BY ~~CERTIFIED~~ MAIL

State of New York  
County of Albany

JOYCE S. VAN PATTEN, 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 20th day of September, 1974, she served the within  
Notice of Decision ~~for Determination~~ by ~~certified~~ mail upon Joseph P.

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

Mr. Joseph P. Smith  
109-20 Queens Blvd.  
Forest Hills, New York 11375

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

20th day of September, 1974

Janet Mack

Joyce S. Van Patten

AD 32 (6-73) 250M

STATE OF NEW YORK  
Department of Taxation and Finance

STATE CAMPUS  
ALBANY, N. Y. 12227



Mr. Joseph P. Smith  
109-20 Queens Blvd.  
Forest Hills, New York 11375

RECEIVED  
TO  
109-20 Queens Blvd.  
Forest Hills, New York 11375

NAME \_\_\_\_\_  
1st Notice 8-23  
2nd Notice 8-28  
Return to 9-7  
SENDER \_\_\_\_\_

UNCLAIMED

CERTIFIED  
No. 204281

MAIL

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

JOSEPH P. SMITH and SAMUEL A. COSTELLO

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. :

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

State of New York  
County of Albany

MARTHA FUNARO , 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 20th day of August , 19 74, she served the within  
Notice of Decision (or Determination) by (certified) mail upon JOSEPH P. SMITH

(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 P. Smith  
109-20 Queens Blvd.  
Forest Hills, New York 11375

and by depositing same enclosed in a postpaid properly addressed wrapper in a  
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the United States Post Office Department within the State of New York.

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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

20th day of August , 19 74

Janet Mack

Martha Funaro

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

JOSEPH P. SMITH and SAMUEL A. COSTELLO

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. :

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

State of New York  
County of Albany

MARTHA FUNARO, 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 20th day of August, 1974, she served the within  
Notice of Decision (or Determination) by (certified) mail upon SAMUEL A. COSTELLO

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

Mr. Samuel A. Costello  
1515 Euclid Avenue  
Cleveland, Ohio 44115

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  
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Sworn to before me this

20th day of August, 1974.

Just Mach

Martha Funaro



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

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

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

AREA CODE 518

STATE TAX COMMISSION  
HEARING UNIT

EDWARD ROOK  
SECRETARY TO  
COMMISSION

ADDRESS YOUR REPLY TO

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

DATED: Albany, New York  
August 20, 1974

Mr. Joseph P. Smith  
109-20 Queens Blvd.  
Forest Hills, New York 11375

Dear Mr. Smith:

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

AD-1.12 (8/73)



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION  
HEARING UNIT

EDWARD ROOK  
SECRETARY TO  
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STATE TAX COMMISSION

MARIO A. PROCACCINO, PRESIDENT  
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HEARING OFFICER

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cc: Petitioner's Representative  
Law Bureau

AD-1.12 (8/73)

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petitions :  
of :  
JOSEPH P. SMITH and SAMUEL A. COSTELLO : DECISION  
for Redetermination of Deficiency or :  
for Refund of Personal Income Tax :  
under Article 22 of the Tax Law for :  
the Year 1968. :

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Petitioners, Joseph P. Smith and Samuel A. Costello, have filed petitions for redetermination of deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1968. (File No. 13-1816619). A formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, 2 World Trade Center, New York, New York, on May 14, 1974, at 1:15 P.M. Petitioner, Joseph P. Smith, appeared pro se and for petitioner, Samuel A. Costello. The Income Tax Bureau appeared by Saul Heckelman, Esq., (James A. Scott, Esq., of counsel).

ISSUE

Are petitioners, Joseph P. Smith and Samuel A. Costello, liable for unpaid New York State withholding taxes due from Cinema-Vue Corporation for the month of December, 1968?

FINDINGS OF FACT

1. Cinema-Vue Corporation failed to pay over to the Income Tax Bureau, New York State personal income taxes withheld from its employees for the month of December, 1968, in the sum of \$214.60.

2. On April 14, 1972, the Income Tax Bureau issued statements of deficiency against petitioners, Joseph P. Smith and Samuel A. Costello, imposing penalties equal to the amount of New York State



withholding taxes due from Cinema-Vue Corporation for the month of December, 1968, 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 \$214.60.

3. Petitioner, Joseph P. Smith, was president, a director and a one-third stockholder of Cinema-Vue Corporation during the period from 1955 until June, 1969. He signed corporate checks and tax returns. He served as a sales manager and played an active role in the every day affairs of the corporation. He received a salary from the corporation.

4. Petitioner, Samuel A. Costello was vice-president, a director and a one-third stockholder of Cinema-Vue Corporation during the year 1968. He was an absentee investor and did not take an active role in the business affairs of the corporation. He did not have a desk or an office in the corporate headquarters. He did not receive a salary or directors fees. He did not sign corporate checks. He came into the corporate offices only once every two or three months.

#### CONCLUSIONS OF LAW

A. That petitioner, Joseph P. Smith, as president and as an active officer of Cinema-Vue Corporation was a person required to collect, truthfully account for and pay over New York State withholding taxes due from said corporation for the month of December, 1968, in accordance with the meaning and intent of sections 674 and 685(1) of the Tax Law.

B. That since petitioner, Joseph P. Smith, willfully failed to collect, truthfully account for and pay over New York State withholding taxes due from Cinema-Vue Corporation for the month

of December, 1968, 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, Samuel A. Costello, was not a responsible officer who willfully failed to collect, truthfully account for and pay over New York State withholding taxes due from Cinema-Vue Corporation for the month of December, 1968, 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, 685(1) and 685(g) of the Tax Law.

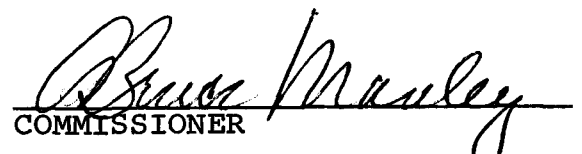
D. That the petition of Joseph P. Smith is denied and the Notice of Deficiency issued against him on April 14, 1972, is sustained.

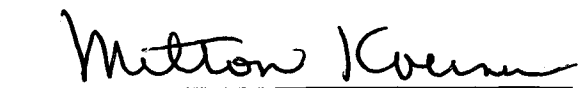
E. That the petition of Samuel A. Costello is granted and the Notice of Deficiency issued against him on April 15, 1972, is cancelled.

DATED: Albany, New York  
August 20, 1974

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER





STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION  
HEARING UNIT

EDWARD ROOK  
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August 20, 1974

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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

AD-1.12 (8/73)

AD 32 (6-73) 250M

STATE OF NEW YORK  
Department of Taxation and Finance

STATE CAMPUS  
ALBANY, N. Y. 12227



Mr. Samuel A. Costello  
1515 Euclid Avenue  
Cleveland, Ohio 44115

**CERTIFIED**

No. 204282

**MAIL**

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petitions :

of :

JOSEPH P. SMITH and SAMUEL A. COSTELLO : DECISION

for Redetermination of Deficiency or :  
for Refund of Personal Income Tax :  
under Article 22 of the Tax Law for :  
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withholding taxes due from Cinema-Vue Corporation for the month of December, 1968, 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 \$214.60.

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B. That since petitioner, Joseph P. Smith, willfully failed to collect, truthfully account for and pay over New York State withholding taxes due from Cinema-Vue Corporation for the month

of December, 1968, 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, Samuel A. Costello, was not a responsible officer who willfully failed to collect, truthfully account for and pay over New York State withholding taxes due from Cinema-Vue Corporation for the month of December, 1968, 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, 685(1) and 685(g) of the Tax Law.

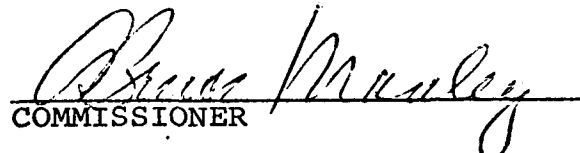
D. That the petition of Joseph P. Smith is denied and the Notice of Deficiency issued against him on April 14, 1972, is sustained.

E. That the petition of Samuel A. Costello is granted and the Notice of Deficiency issued against him on April 15, 1972, is cancelled.

DATED: Albany, New York  
August 20, 1974

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

