

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
JOSEPH PULANO

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(s) 1967 and 1968.

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 17th day of December, 1975, she served the within
Notice of Decision ~~XXXXXXXXXXXX~~ by (certified) mail upon JOSEPH PULANO

~~XXXXXXXXXXXX~~ the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mr. Joseph Pulano
16 Tioga Street
Buffalo, New York 14216

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 ~~XXXXXXXXXXXX~~
~~XXX~~ petitioner herein and that the address set forth on said wrapper is the last
known address of the ~~XXXXXXXXXXXX~~ petitioner.

Sworn to before me this
17th day of December, 1975.

Mary Hoff

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JOSEPH PULANO

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 ~~(8)~~ 22 of the
Tax Law for the Year(s) 1967 and 1968. :

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 17th day of December, 1975, she served the within Notice of Decision ~~(XXXXXX)~~ by (certified) mail upon ROY R. CESAR, ESQ.

(representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Roy R. Cesar, Esq.
626-628 Ellicott Square
Buffalo, New York 14203

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

17th day of December, 1975

Mary G. [Signature]

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

BUILDING 9, ROOM 107
STATE CAMPUS
ALBANY, N.Y. 12227

AREA CODE 518

STATE TAX COMMISSION
HEARING UNIT

PAUL GREENBERG
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

MR. WRIGHT
MR. COBURN
MR. LEISNER
(518) 457-~~XXXXXX~~

DATED: Albany, New York
December 17, 1973

Mr. Joseph Pulano
16 Toga Street
Buffalo, New York 14216

Dear Mr. Pulano:

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

Please take further notice that pursuant to
Section ~~§~~) **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,

L. ROBERT LEISNER

HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

FINDINGS OF FACT

1. Drott Construction Corp. failed to pay over to the Income Tax Bureau \$8,672.32 of New York State personal income taxes withheld from its employees for the period from January 1, 1967 to May 18, 1968.

2. On August 31, 1970, the Income Tax Bureau issued a Statement of Deficiency imposing a penalty against petitioner, Joseph Pulano, equal to the amount of New York State withholding taxes due from Drott Construction Corp. for the period from January 1, 1967 to May 18, 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 and, accordingly, issued a Notice of Deficiency in the sum of \$8,672.32.

3. The Notice of Deficiency was subsequently modified on July 11, 1973, to cover only the period from January 1, 1967 to October 30, 1967, since petitioner's resignation from the office to Director of the Drott Construction Corp. was effective thereafter.

4. The taxpayer, Joseph Pulano, petitioned for redetermination of the deficiencies.

5. While petitioner was working for Anthony Fago, the owner of Drott Construction Corp., the latter asked petitioner if he would be an officer of Drott Construction Corp. The petitioner consented in order to accommodate Mr. Fago, for whom he had worked for many years.

6. Petitioner never officially acted as an officer or director of Drott Construction Corp. He never attended any meetings except the meeting where he signed a resignation on November 1, 1967, as an officer and Director of Drott Construction Corp.

7. Petitioner was never consulted with relation to any business conducted by the corporation. He never signed any check; he never signed any contracts for said corporation and he was never consulted or asked to vote on any matter concerning the business of said corporation.

8. Petitioner was merely an employee of Drott Construction Corp. and only performed work at construction sites. He never participated in any administrative or office decisions or actions, and he knew nothing about the withholding tax or the amount of wages that were being paid to employees.

9. Petitioner worked for an hourly wage and received no remuneration as an officer or director of Drott Construction Corp.

CONCLUSIONS OF LAW

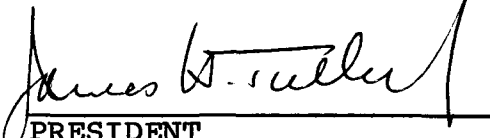
A. Petitioner, Joseph Pulano, as a nominal corporate officer and director of Drott Construction Corp., was not a person required to collect, truthfully account for and pay over New York State personal income withholding taxes due from said corporation for the period from January 1, 1967 to October 30, 1967, in accordance with the meaning and intent of section 674 of the Tax Law.

B. Since petitioner, Joseph Pulano, was not a person required to collect, truthfully account for and pay over New York State personal income withholding taxes due from Drott Construction Corp. for the period from January 1, 1967 to October 30, 1967, a penalty equal to the total amount of unpaid withholding taxes was therefore improperly assessed against him in accordance with the meaning and intent of section 685(g) of the Tax Law.

C. The taxpayer's petition is sustained. It is determined that there are no deficiencies against petitioner in personal income tax for the years 1967 and 1968.

DATED: Albany, New York
December 17, 1975

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER

COMMISSIONER