

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
RALPH APA

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or
a Revision of a Determination or a Refund
of Personal Income
Taxes under Article (5) 22 of the
Tax Law for the Year (5) ~~xxxx~~ ~~xxxx~~ (x) 1973.:

State of New York
County of Albany

Bruce Batchelor, 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 March, 1977, ~~she~~ served the within
Notice of Decision by (certified) mail upon Ralph Apa

(~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. Ralph Apa
101 Bridle Lane
Elma, New York 14059

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 Postal Service within the State of New York.

That deponent further says that the said addressee is the (~~representative of~~
~~of the~~) 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 March, 1977.

Bruce Batchelor

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N.Y. 12227

STATE TAX COMMISSION

ADDRESS YOUR REPLY TO

March 4, 1977

TELEPHONE: (518) **457-1723**

Mr. Ralph Apa
101 Bridle Lane
Elma, New York 14059

Dear Mr. Apa:

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

Please take further notice that pursuant to
Section **(X) 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.

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. They
will be referred to the proper party for reply.

Very truly yours,

Frank J. Puccia
Supervisor of
Small Claims Hearings

Enc.

cc: ~~XXXXXXXXXXXXXXXXXXXX~~

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
RALPH APA : DECISION
for Redetermination of a Deficiency or :
for Refund of Personal Income Taxes under :
Article 22 of the Tax Law for the Year :
1973. :

Petitioner, Ralph Apa, residing at 101 Bridle Lane, Elma, New York 14059, has filed a petition for redetermination of a deficiency or for refund of personal income taxes under Article 22 of the Tax Law for the year 1973. (File No. 16-0954558).

A small claims hearing was held September 15, 1976 at 1:15 P.M. at the offices of the State Tax Commission, 65 Court Street, Buffalo, New York, before Harry Huebsch, Hearing Officer. The petitioner, Ralph Apa, appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq., (Alexander Weiss, Esq., of counsel).

ISSUE

Was petitioner, Ralph Apa, liable for unpaid New York State withholding taxes due from Ontario Pump and Tank Corporation for the period April 1, 1973 to June 30, 1973?

FINDINGS OF FACT

1. Ontario Pump and Tank Corp. failed to pay over to the Income Tax Bureau \$389.60 of New York State personal income taxes

withheld from its employees during the period April 1, 1973 to June 30, 1973. The corporation is presently defunct.

2. On September 29, 1975, the Income Tax Bureau issued a Statement of Deficiency against petitioner, Ralph Apa, imposing a penalty equal to the amount of New York State taxes due from Ontario Pump and Tank Corp., 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 \$389.60.

3. During the period, April 1, 1973 to June 30, 1973, petitioner, Ralph Apa, was president of the corporation. He owned 25% of the corporation's stock and he had authority to write checks for the corporation in payment of its obligations. Subsequently to the period, April 1, 1973 to June 30, 1973, the assets of the corporation were liquidated. At this time, petitioner, Ralph Apa, was aware of the failure to pay over New York State taxes withheld from employees. He participated in the liquidation of assets and disbursement of the resulting cash. Petitioner, Ralph Apa, never resigned as president of Ontario Pump and Tank Corp. and had the authority to write checks until the corporation ceased to exist.

CONCLUSIONS OF LAW

A. That petitioner, Ralph Apa, as an officer of Ontario Pump and Tank Corp., was a person required to collect, truthfully account for and pay over New York State withholding taxes due

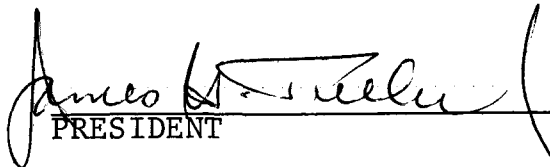
from said corporation for the period April 1, 1973 to June 30, 1973, in accordance with the meaning and intent of sections 674 and 685(n) of the Tax Law.

B. That since petitioner, Ralph Apa, willfully failed to collect, truthfully account for and pay over New York State taxes due from Ontario Pump and Tank Corp. for the period April 1, 1973 to June 30, 1973, a penalty equal to the total amount of 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 the petition of Ralph Apa is denied and the Notice of Deficiency issued September 29, 1975 is sustained.

DATED: Albany, New York
March 4, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER