

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
ANTHONY S. FAILLACE, PHILIP TURK,  
and LOUIS DE PASQUALE  
For a Redetermination of a Deficiency or  
a Revision of a Determination or a Refund  
of Personal Income  
Taxes under Article (x) 22 of the  
Tax Law for the Year(s) ~~on Period(s)~~  
1970 & 1971.

AFFIDAVIT OF MAILING

State of New York  
County of Albany

Bruce Batchelor, being duly sworn, deposes and says that  
~~he~~ is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 28th day of February, 1977, ~~he~~ served the within  
Notice of Decision by (certified) mail upon Anthony S. Faillace

(~~representative of~~) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed

as follows:

Mr. Anthony S. Faillace  
510 East 23rd Street  
New York, New York 10010

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 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

28th day of February, 1977.

Bruce Batchelor

Janet Turk

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

ANTHONY S. FAILLACE, PHILIP TURK,

and LOUIS DE PASQUALE

For a Redetermination of a Deficiency or  
a Revision of a Determination or a Refund  
of Personal Income  
Taxes under Article(s) 22 of the  
Tax Law for the Year(s) or Period(s)  
1970 & 1971.

AFFIDAVIT OF MAILING

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 28th day of February, 19 77, she served the within  
Notice of Decision by (certified) mail upon Philip Turk  
(representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Mr. Philip Turk  
300 East 40th Street  
New York, New York 10016  
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 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

28th day of February, 19 77

Bruce Batchelor

Just Mark

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
ANTHONY S. FAILLACE, PHILIP TURK, :  
and LOUIS DE PASQUALE :  
For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Personal Income :  
Taxes under Article (x) 22 of the :  
Tax Law for the Year(s) ~~on Period(s)~~ :  
1970 & 1971.

AFFIDAVIT OF MAILING

State of New York  
County of Albany

Bruce Batchelor , being duly sworn, deposes and says that  
~~he~~ is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 28th day of February , 1977, ~~he~~ served the within  
Notice of Decision by (certified) mail upon Louis DePasquale

~~(representative of)~~ the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Mr. Louis DePasquale  
70 Shinnecock Hills Road  
Southampton, 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 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

28th day of February , 1977.

Bruce Batchelor

Jan T. Mack

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
ANTHONY S. FAILLACE, PHILIP TURK, :  
and LOUIS DE PASQUALE :  
For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Personal Income :  
Taxes under Article(x) 22 of the :  
Tax Law for the Year(s) ~~or Period(s)~~ :  
1970 & 1971.

AFFIDAVIT OF MAILING

State of New York  
County of Albany

Bruce Batchelor, being duly sworn, deposes and says that  
he is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 28th day of February, 1977, he served the within  
Notice of Decision by (certified) mail upon Michael B. Goldenthal

(representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows:

Michael B. Goldenthal, Esq.  
Goldenthal & Tommaso  
31-90 Steinway Street  
Long Island City, New York 11103

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 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

28th day of February, 1977.

Bruce Batchelor

Just Mack



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

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

ADDRESS YOUR REPLY TO

February 28, 1977

TELEPHONE: (518) 457-1723

Mr. Philip Turk  
300 East 40th Street  
New York, New York 10016

Dear Mr. Turk:

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.

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,

Paul B. Coburn  
Supervising Tax  
Hearing Officer

Enc.

cc: ~~Receptionist's Representative~~

Taxing Bureau's Representative:



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

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

ADDRESS YOUR REPLY TO

**February 28, 1977**

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

Mr. Anthony S. Faillace  
510 East 23rd Street  
New York, New York 10010

**Dear Mr. Faillace:**

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.

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,

**Paul B. Coburn**  
**Supervising Tax**  
**Hearing Officer**

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

## STATE TAX COMMISSION

In the Matter of the Petitions :  
of :  
ANTHONY S. FAILLACE, PHILIP TURK, and :  
LOUIS DePASQUALE :  
For Redetermination of a Deficiency or : DECISION  
for Refund of Personal Income Taxes under:  
Article 22 of the Tax Law for the Years  
1970 and 1971. :

Petitioners, Anthony S. Faillace, 510 East 23rd Street, New York, New York 10010, Philip Turk, 300 East 40th Street, New York, New York 10016 and Louis DePasquale, 70 Shinnecock Hills Road, Southampton, New York, filed petitions for redetermination of a deficiency or for refund of personal income taxes under Article 22 of the Tax Law for the years 1970 and 1971. (File Nos. 00262, 00263 and 00264).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on September 13, 1976, at 2:45 P.M. Petitioner, Anthony S. Faillace, appeared by Michael B. Goldenthal, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Arnold Dorman, Esq. of counsel). Petitioners, Philip Turk and Louis DePasquale failed to appear, nor did anyone appear on their behalf.

ISSUE

Whether petitioners are liable for unpaid New York State withholding taxes due from Stage Right Organization, Inc., for the years 1970 and 1971.

FINDINGS OF FACT

1. On February 28, 1972, the Income Tax Bureau issued statements of deficiency against petitioners Anthony S. Faillace, Philip Turk and Louis DePasquale, equal to the amount of New York State withholding taxes due from Stage Right Organization, Inc. for the periods May 1, 1970 through December 31, 1970 and January 1, 1971 through January 12, 1971. These statements were issued upon the grounds that the petitioners were persons required to collect, truthfully account for and pay over said taxes and that they willfully failed to do so. Accordingly, the Income Tax Bureau issued notices of deficiency in the amount of \$11,295.55.

2. Petitioner, Anthony S. Faillace, was a vice-president in charge of sales and also a director of Stage Right Organization, Inc. The company petitioned for bankruptcy in the United States District Court, Southern District, New York on September 29, 1970. On January 12, 1971, it was thusly adjudicated bankrupt. Petitioner resigned from the company on October 30, 1970.

3. Petitioner, Philip Turk, was president of the bankrupt Stage Right Organization, Inc. He was empowered to sign corporate checks and did sign the withholding returns submitted for the periods in issue.



4. Petitioner, Louis DePasquale, was secretary-treasurer of the bankrupt Stage Right Organization, Inc. He was empowered to sign corporate checks.

CONCLUSIONS OF LAW

A. That petitioner, Anthony S. Faillace, was not a responsible officer who willfully failed to collect, truthfully account for and pay over New York State withholding taxes due from Stage Right Organization, Inc. for the periods May 1, 1970 through December 31, 1970 and January 1, 1971 through January 12, 1971. 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(n) and 685(g) of the Tax Law.

B. That petitioner, Philip Turk, as president and as an active fiscal officer of Stage Right Organization, Inc. was a person required to collect, truthfully account for and pay over New York State withholding taxes due from said corporation for the periods May 1, 1970 through December 31, 1970 and January 1, 1971 through January 12, 1971, in accordance with the meaning and intent of sections 674 and 685(n) of the Tax Law.

C. That since petitioner, Philip Turk willfully failed to account for and pay over New York State withholding taxes due from Stage Right Organization, Inc. for the periods May 1, 1970 through December 31, 1970 and January 1, 1971 through January 12, 1971, 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.

D. That petitioner, Louis DePasquale, as secretary-treasurer and as an active fiscal officer of Stage Right Organization, Inc. was a person required to collect, truthfully account for and pay over for the periods May 1, 1970 through December 31, 1970 and January 1, 1971 through January 12, 1971, in accordance with the meaning and intent of sections 674 and 685(n) of the Tax Law.

E. That since petitioner, Louis DePasquale willfully failed to account for and pay over New York State withholding taxes due from Stage Right Organization, Inc. for the periods May 1, 1970 through December 31, 1970 and January 1, 1971 through January 12, 1971, 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.

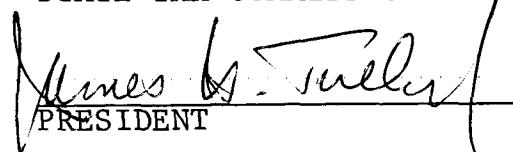
F. That the petition of Anthony F. Faillace is granted and the Notice of Deficiency issued against him on February 28, 1972, is cancelled.

G. That the petition of Philip Turk is denied and the Notice of Deficiency issued against him on February 28, 1972 is sustained.

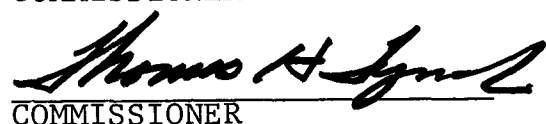
H. That the petition of Louis DePasquale is denied and the Notice of Deficiency issued against him on February 28, 1972 is sustained.

DATED: Albany, New York  
February 28, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

ANTHONY S. FAILLACE, PHILIP TURK, and  
LOUIS DE PASQUALE

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Personal Income :  
Taxes under Article(s) 22 of the :  
Tax Law for the Year(s) ~~xxxxxx~~ :  
1970 and 1971

State of New York  
County of Albany

Bruce Batchelor , being duly sworn, deposes and says that

He is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 18th day of March , 1977, he served the within  
Notice of Decision by (certified) mail upon Philip Turk

(~~representative of~~) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed

as follows: Mr. Philip Turk  
6142 N. 20 Street  
Phoenix, Arizona

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

18th day of March , 1977.

Bruce Batchelor

Janet Muel

TA-26 (4-76) 25M

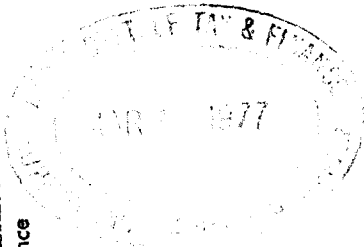
STATE OF ~~NEW YORK~~ HEARING

Department of Taxation and Finance

TAX APPEALS BUREAU

STATE CAMPUS

ALBANY, N. Y. 12227



Mr. Philip Turk  
300 East 40th Street  
New York, New York 10016

*Very truly yours,  
[Signature]*

17A3



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

February 28, 1977

TELEPHONE: (518) 457-1723

REMAILED: March 18, 1977

Mr. Philip Turk  
300 East 40th Street  
New York, New York 10016

Dear Mr. Turk:

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,.

Paul B. Coburn  
Supervising Tax  
Hearing Officer

Enc.

cc: ~~Patricia M. Coburn, Representative~~

Taxing Bureau's Representative:

# FORMAL HEARING

TY. 26 (4-76) 25M

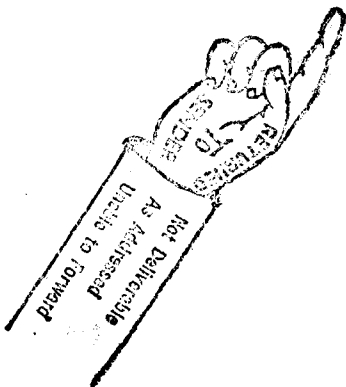
STATE OF NEW YORK

Department of Taxation and Finance

TAX APPEALS BUREAU

STATE CAMPUS

ALBANY, N. Y. 12227



Mr. Philip Turk  
6142 N. 20 Street  
Phoenix, Arizona

FW

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petitions :

of :

ANTHONY S. FAILLACE, PHILIP TURK, and :  
LOUIS DePASQUALE :

DECISION

For Redetermination of a Deficiency or  
for Refund of Personal Income Taxes under:  
Article 22 of the Tax Law for the Years  
1970 and 1971. :

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Petitioners, Anthony S. Faillace, 510 East 23rd Street,  
New York, New York 10010, Philip Turk, 300 East 40th Street, New  
York, New York 10016 and Louis DePasquale, 70 Shinnecock Hills  
Road, Southampton, New York, filed petitions for redetermination  
of a deficiency or for refund of personal income taxes under  
Article 22 of the Tax Law for the years 1970 and 1971. (File  
Nos. 00262, 00263 and 00264).

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Officer, at the offices of the State Tax Commission, Two World  
Trade Center, New York, New York, on September 13, 1976, at  
2:45 P.M. Petitioner, Anthony S. Faillace, appeared by Michael  
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Esq. (Arnold Dorman, Esq. of counsel). Petitioners, Philip Turk  
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2. Petitioner, Anthony S. Faillace, was a vice-president in charge of sales and also a director of Stage Right Organization, Inc. The company petitioned for bankruptcy in the United States District Court, Southern District, New York on September 29, 1970. On January 12, 1971, it was thusly adjudicated bankrupt. Petitioner resigned from the company on October 30, 1970.

3. Petitioner, Philip Turk, was president of the bankrupt Stage Right Organization, Inc. He was empowered to sign corporate checks and did sign the withholding returns submitted for the periods in issue.



4. Petitioner, Louis DePasquale, was secretary-treasurer of the bankrupt Stage Right Organization, Inc. He was empowered to sign corporate checks.

CONCLUSIONS OF LAW

A. That petitioner, Anthony S. Faillace, was not a responsible officer who willfully failed to collect, truthfully account for and pay over New York State withholding taxes due from Stage Right Organization, Inc. for the periods May 1, 1970 through December 31, 1970 and January 1, 1971 through January 12, 1971. 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(n) and 685(g) of the Tax Law.

B. That petitioner, Philip Turk, as president and as an active fiscal officer of Stage Right Organization, Inc. was a person required to collect, truthfully account for and pay over New York State withholding taxes due from said corporation for the periods May 1, 1970 through December 31, 1970 and January 1, 1971 through January 12, 1971, in accordance with the meaning and intent of sections 674 and 685(n) of the Tax Law.

C. That since petitioner, Philip Turk willfully failed to account for and pay over New York State withholding taxes due from Stage Right Organization, Inc. for the periods May 1, 1970 through December 31, 1970 and January 1, 1971 through January 12, 1971, 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.

D. That petitioner, Louis DePasquale, as secretary-treasurer and as an active fiscal officer of Stage Right Organization, Inc. was a person required to collect, truthfully account for and pay over for the periods May 1, 1970 through December 31, 1970 and January 1, 1971 through January 12, 1971, in accordance with the meaning and intent of sections 674 and 685(n) of the Tax Law.

E. That since petitioner, Louis DePasquale willfully failed to account for and pay over New York State withholding taxes due from Stage Right Organization, Inc. for the periods May 1, 1970 through December 31, 1970 and January 1, 1971 through January 12, 1971, 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.

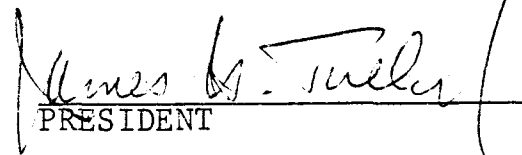
F. That the petition of Anthony F. Faillace is granted and the Notice of Deficiency issued against him on February 28, 1972, is cancelled.

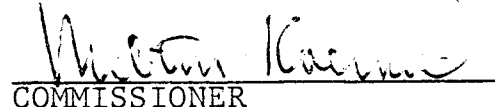
G. That the petition of Philip Turk is denied and the Notice of Deficiency issued against him on February 28, 1972 is sustained.

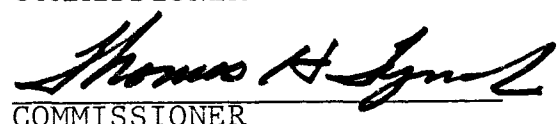
H. That the petition of Louis DePasquale is denied and the Notice of Deficiency issued against him on February 28, 1972 is sustained.

DATED: Albany, New York  
February 28, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER