

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

PETER D. FLEMING

AFFIDAVIT OF MAILING

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

State of New York
County of Albany

Marsina Donnini, 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 15th day of July, 1977, she served the within Notice of Decision by (certified) mail upon Peter D. Fleming ~~(representative of)~~ the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Peter D. Fleming
RD #2
Middletown, New York 10940
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

15 day of July, 1977

Marsina Donnini

Janet Mack



STATE OF NEW YORK
STATE TAX COMMISSION
TAX APPEALS BUREAU
ALBANY, NEW YORK 12227

July 15, 1977

JAMES H. TULLY JR., PRESIDENT
MILTON KOERNER
THOMAS H. LYNCH

Peter D. Fleming
RD #2
Middletown, New York 10940

Dear Mr. Fleming:

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

You have now exhausted your right of review at the administrative level. Pursuant to section ~~(g)~~ **690** of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within **4 Months** from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,

JOSEPH CHYRYWATY
Hearing Examiner

cc: ~~Re: [illegible]~~

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
PETER D. FLEMING	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Taxes under	:	
Article 22 of the Tax Law for the Year 1971.	:	

Petitioner, Peter D. Fleming, residing at RD #2, Middletown, New York 10940, 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 1971. (File No. 11291).

A small claims hearing was held before William Valcarcel, Small Claims Hearing Officer, on October 26, 1976, at 10:45 A.M. at the offices of the State Tax Commission, Two World Trade Center, New York, New York. The petitioner appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq., (A. Schwartz, Esq., of counsel).

ISSUE

Whether petitioner, Peter D. Fleming, is liable for a penalty in accordance with section 685(g) of the Tax Law, as a person who failed to collect, truthfully account for, and pay over income taxes withheld for Machinery Unlimited, Inc., during the period July 1, 1971 to December 31, 1971.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Petitioner, Peter D. Fleming, was employed by Machinery Unlimited, Inc. as a mechanic from January 1, 1971 to April, 1971. In addition, petitioner was listed as a vice-president for the sole purpose of being able to get corporate checks certified at the bank.

2. Petitioner was not a shareholder, creditor or investor of Machinery Unlimited, Inc., and had no authority in the financial, managerial, or administrative operations of the corporation.

3. Petitioner was under the direct supervision of Mr. Jack Gardner, majority shareholder, corporate officer, and executive director of Machinery Unlimited, Inc.

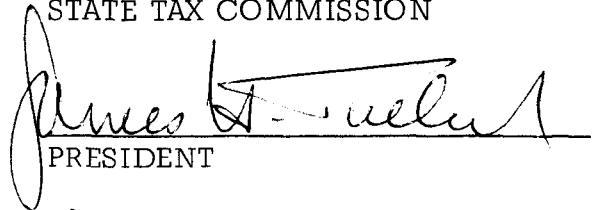
4. Petitioner terminated his employment with Machinery Unlimited, Inc. in April, 1971, and formed his own construction corporation, whereby he devoted his full-time to that corporation.

5. That petitioner, Peter D. Fleming, was not a person required to collect, truthfully account for, and pay over income taxes withheld for Machinery Unlimited, Inc., and is not liable to a penalty in accordance with the meaning and intent of section 685(g) of the Tax Law.

6. That the petition of Peter D. Fleming is granted and the Notice of Deficiency issued August 26, 1974 is cancelled.

DATED: Albany, New York
July 15, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER