

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

PHILIP D'ANDREA

AFFIDAVIT OF MAILING

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)~~ :  
1972.

State of New York  
County of Albany

Marsini 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 22 day of August, 1977, she served the within Notice of Decision by (certified) mail upon Philip D'Andrea ~~(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 D'Andrea  
1808 Fairfax Street  
Elmont, New York 11003

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)~~ ~~(representative of)~~ petitioner herein and that the address set forth on said wrapper is the last known address of the ~~(representative of)~~ ~~(representative of)~~ petitioner.

Sworn to before me this

22nd day of August

, 1977.

Marsina Donnini

Janet Mack

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

PHILIP D'ANDREA

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Personal Income :  
Taxes under Article ~~(9)~~ 22 of the :  
Tax Law for the Year ~~(XXXX Period(s))~~ :  
1972.

State of New York  
County of Albany

Marsini 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 22 day of August, 1977, she served the within Notice of Decision by (certified) mail upon Allen D.

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

Allen D. Goodrich, Esq.  
Demov, Morris, Levin & Shein, Esq.  
40 West 57th Street  
New York, New York 10019

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

22nd day of August, 1977.

Marsina Donnini

Just Mack



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

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

August 22, 1977

Mr. Philip D'Andrea  
1808 Fairfax Street  
Elmont, New York 11003

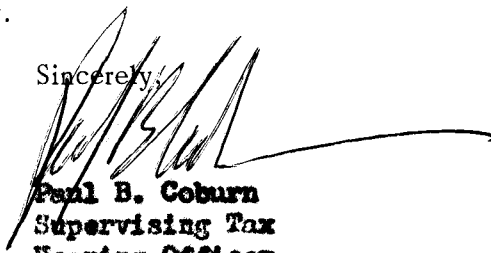
Dear Mr. D'Andrea:

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 ~~47~~ **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,

  
Paul B. Coburn  
Supervising Tax  
Hearing Officer

cc: Petitioner's Representative  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition  
of  
PHILIP D'ANDREA  
for Redetermination of a Deficiency or  
for Refund of Personal Income Tax under  
Article 22 of the Tax Law for the Year 1972.

DECISION

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Petitioner, Philip D'Andrea, 1808 Fairfax Street, Elmont, New York 11003, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1972.  
(File No. 16905)

A formal hearing was held before Edward L. Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on April 27, 1977, at 1:15 P.M. The petitioner appeared by Demov, Morris, Levin & Shein, Esq. (Allen D. Goodrich, of counsel). The Income Tax Bureau appeared by Peter Crotty, Esq. (Irving Atkins, Esq., of counsel).

ISSUE

Whether the petitioner, Philip D'Andrea, is liable for unpaid New York State withholding taxes due from Fantasichrome, Inc. for the calendar year of 1972.

FINDINGS OF FACT

1. Fantastichrome, Inc. failed to pay over to the Income Tax Bureau \$1,244.59 of New York State personal income taxes withheld from its employees for the calendar year of 1972.

2. The Form IT-2103 (Reconciliation of Personal Income Tax Withheld) dated February 26, 1973, which was filed with 15 individual statements of personal income taxes withheld from employees of Fantastichrome, Inc., had been signed by petitioner, Philip D'Andrea, as vice-president of Fantastichrome, Inc.

3. On December 23, 1974, the Income Tax Bureau issued a Statement of Deficiency imposing a penalty against petitioner, Philip D'Andrea, equal to the amount of New York State withholding taxes due from Fantastichrome, Inc. for the calendar year of 1972, 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. Accordingly, a Notice of Deficiency of \$1,244.59 was issued against petitioner, Philip D'Andrea.

4. Fantastichrome, Inc. was a New York corporation formed in 1969 by petitioner, Philip D'Andrea, and was in the business of manufacturing art reproductions. Until mid-1972 it was closely held and operated by petitioner and his family. Petitioner, Philip D'Andrea, was president, director and owner of the issued capital stock.

5. On September 12, 1972, finding Fantastichrome, Inc. in financial difficulties, petitioner Philip D'Andrea, sold all

of the stock of Fantastichrome, Inc. to Decor Originals, Inc., a North Carolina corporation. By the terms of the agreement of sale dated September 12, 1972, Decor Originals, Inc. agreed that it would indemnify and hold harmless the petitioner, Philip D'Andrea, against any and all claims "...which arise out of or relate in any way to the business hereafter conducted by Fantastichrome, Inc...."

6. By the terms of the said agreement, petitioner, Philip D'Andrea, became vice-president of Fantastichrome, Inc. in charge of manufacturing, research and development. He was excluded from management, bookkeeping, collection and the handling of funds for the corporation. These functions were reserved to Byron E. Bean, President and Treasurer of Fantastichrome, who had his offices in North Carolina.

7. Petitioner, Philip D'Andrea, reported hours worked by Fantastichrome, Inc. in New York to the officers in North Carolina. Each week Decor Originals, Inc. made a deposit in a special payroll bank account in New York of the exact amount of the net payroll (exclusive of taxes) for that week. Petitioner, Philip D'Andrea, sometimes drew individual payroll checks, the only checks he was authorized to sign.

8. All books and records were kept in North Carolina by the officers there after September 12, 1972. Petitioner, Philip D'Andrea, was informed and believed that all necessary taxes were being paid from those offices. No funds of the corporation were available to petitioner, Philip D'Andrea except the weekly net payroll.

9. No evidence was introduced as to the amount of income tax withheld from January 1, 1972 to September 12, 1972, nor as to when or whether it was paid over to the New York State Income Tax Bureau.

Petitioner, Philip D'Andrea, was the controlling and operating officer of Fantastichrome, Inc. in 1972 prior to the sale of all his stock in the corporation.

CONCLUSIONS OF LAW

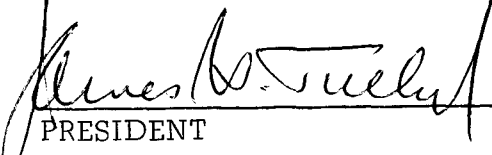
A. That petitioner, Philip D'Andrea, as president and sole operating officer of Fantastichrome, Inc. prior to September 12, 1972 and as a vice-president who signed the tax return for income tax withheld for the calendar year of 1972 was a person required to collect, truthfully account for and pay over New York State personal income withholding taxes for said year.

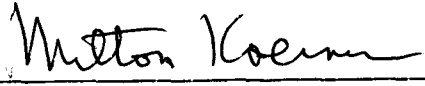
B. That since petitioner, Philip D'Andrea, as an officer of the Fantastichrome, Inc. Corporation under a duty to collect, truthfully account for and pay over New York State personal income withholding taxes willfully failed to do so for the calendar year of 1972, therefore a penalty equal to the total 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.

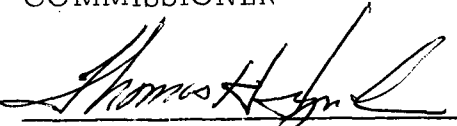
C. That the petition of Philip D'Andrea is denied and the Notice of Deficiency issued December 23, 1974 is sustained.

DATED: Albany, New York  
August 22, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER