

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
JACK (JOHN J.) HICKEY

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article ~~(8)~~ 22 of the :
Tax Law for the ~~Year(s) or~~ Period ~~(s)~~ :
June 1, 1970 through December 31, 1970

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 30th day of June, 1977, she served the within
Notice of Decision by (certified) mail upon Jack (John J.) Hickey

(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Jack (John J.) Hickey
9 Balboa Drive
Kings Park, New York 11754

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

30th day of June, 1977

Marsina Donnini

Janet 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

June 30, 1977

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

Jack (John J.) Hickey
9 Balboa Drive
Kings Park, New York 11754

Dear Mr. Hickey:

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

Please take further notice that pursuant to
Section(s) **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: ~~Petitioner's Representative:~~

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
JACK (JOHN J.) HICKEY	:	
for Redetermination of a Deficiency or for:		DECISION
Refund of Personal Income Taxes under		
Article 22 of the Tax Law for the Period	:	
June 1, 1970 through December 31, 1970.	:	

Petitioner, Jack (John J.) Hickey, residing at 9 Balboa Drive, Kings Park, New York 11754, 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 period June 1, 1970 through December 31, 1971. (File No. 14547).

A small claims hearing was held before Joseph A. Milack, Small Claims Hearing Officer, on January 25, 1977 at 1:15 P.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., (Frank Levitt, Esq. of counsel).

ISSUE

Whether petitioner, Jack (John J.) Hickey, is liable for unpaid New York State withholding taxes due from Miat Industries, Inc. for the period June 1, 1970 through December 31, 1970.

FINDINGS OF FACT

1. Miat Industries, Inc. failed to pay over to the Income Tax Bureau New York State personal income taxes withheld from its employees during the period June 1, 1970 through December 31, 1970. The corporation is now defunct.

2. On March 23, 1974, the Income Tax Bureau issued a Statement of Deficiency against petitioner, Jack (John J.) Hickey, imposing a penalty equal to the amount of New York State withholding taxes due from Miat Industries, Inc. for the period June 1, 1970 through December 31, 1970, 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. In accordance with the aforesaid Statement of Deficiency, the Income Tax Bureau issued a Notice of Deficiency in the sum of \$927.87.

3. Petitioner, was treasurer of Miat Industries, Inc., a corporation owned and controlled by the Treacy family, from its inception in May of 1970 until he terminated his employment with said corporation in December of 1970. Prior to becoming treasurer of Miat Industries, Inc. he was employed by Mid-Island Treacy, Inc. for approximately twenty years, a corporation dissolved upon the inception of Miat Industries, Inc. and having the same corporate ownership.

4. During petitioner's twenty years of employment with Mid-Island Treacy, Inc., his duties consisted of taking phone orders, supervising and participating in packing and shipping and delivering and picking up merchandise. Said duties did not change upon the inception of Miat Industries, Inc. or his designation as treasurer.

5. As treasurer of Miat Industries, Inc., petitioner, Jack (John J.) Hickey, was authorized to co-sign corporate checks; but, he alone could not sign or issue checks. He had no control over the corporation's financial affairs nor was he authorized to make payroll decisions, determine priority of payments to creditors or prepare Federal or New York State tax returns of any kind. With the exception of the monthly New York State withholding tax return for June of 1970, which he signed at the request of the corporate president who was out-of-town, he never signed any tax returns of any kind.

6. Miat Industries, Inc. had also failed to pay over to the Internal Revenue Service Federal withholding taxes due and although petitioner, Jack (John J.) Hickey, was questioned in regard to this by the Internal Revenue Service, he was not one of those assessed as a responsible officer.

CONCLUSIONS OF LAW

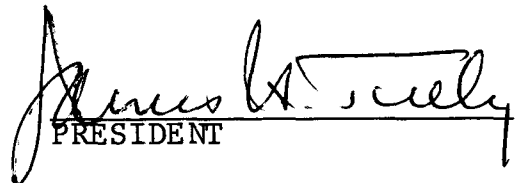
A. That, petitioner, Jack (John J.) Hickey, was not a person required to collect, truthfully account for and pay over New York State withholding taxes due from Miat Industries, Inc.

during the period June 1, 1970 through December 31, 1970 in accordance with the meaning and intent of section 685(n) of the Tax Law. Therefore, the penalty equal to the total amount of unpaid withholding taxes due from said corporation was improperly imposed.

B. That, the petition of Jack (John J.) Hickey is granted and the Notice of Deficiency issued on March 25, 1974 in the amount of \$927.87 is cancelled.

DATED: Albany, New York
June 30, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER