

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
PIETRO LIBARDI

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) or~~ Period(s) :
12/1/73 through 3/23/74.

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 25th day of January , 1977 , she served the within
Notice of Decision by (certified) mail upon Pietro
Libardi ~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. Pietro Libardi
91-28 80th Street
Woodhaven, New York 11421
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

25th day of January , 1977.

Bruce Batchelor

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

January 25, 1977

TELEPHONE: (518) 457-1723

Mr. Pietro Libardi
91-28 80th Street
Woodhaven, New York 11421

Dear Mr. Libardi:

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

Please take further notice that pursuant to
Section(3) **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
FRANK J. PUCCIA
SUPERVISOR OF
SMALL CLAIMS HEARINGS

Enc.

cc: ~~PERSONS'S REPRESENTATIVE~~

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
PIETRO LIBARDI	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Taxes under	:	
Article 22 of the Tax Law for the Periods	:	
December 1, 1973 through March 23, 1974.	:	

Petitioner, Pietro Libardi, residing at 91-28 80th Street, Woodhaven, New York 11421, has filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the periods December 1, 1973 through March 23, 1974 (File No. 13-2753371).

A small claims hearing was held before Joseph A. Milack, Small Claims Hearing Officer, on August 24, 1976 at 10:45 A.M. at the offices of the State Tax Commission, Two World Trade Center, New York, New York. The petitioner, Pietro Libardi, appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq., (Paul B. Rosenkranz, Esq. of counsel).

ISSUE

Whether petitioner, Pietro Libardi, is liable for unpaid New York State withholding taxes due from Justins Restaurant Inc. for the periods December 1, 1973 through March 23, 1974.

FINDINGS OF FACT

1. Justins Restaurant Inc. failed to pay over to the Income Tax Bureau New York State personal income taxes withheld from its employees during the periods December 1, 1973 through March 23, 1974. The corporation is presently insolvent.

2. On January 27, 1975, the Income Tax Bureau issued a Statement of Deficiency against petitioner, Pietro Libardi, imposing a penalty equal to the amount of New York State withholding taxes due from Justins Restaurant Inc. for the period December 1, 1973 through March 23, 1974, 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, it issued a Notice of Deficiency in the sum of \$2,960.41.

3. Justins Restaurant Inc. was engaged in the restaurant business during the period at issue. Petitioner, Pietro Libardi, was secretary of the corporation. He served as the operational officer of the corporation in the absence of the sole stockholder and president. He purchased inventory, administered the work force, maintained the payroll records, aided in the corporate bookkeeping and signed checks. He did not sign Federal or New York State withholding tax returns.

4. Petitioner, Pietro Libardi, was aware that the withholding taxes at issued were not paid.

CONCLUSIONS OF LAW

A. That, petitioner, Pietro Libardi, as an officer of Justins Restaurant, Inc. was a person required to collect, truthfully account for and pay over New York State withholding taxes due from said corporation for the period December 1, 1973 through March 23, 1974.

B. That, petitioner, Pietro Libardi, willfully failed or caused Justins Restaurant, Inc. to willfully fail to collect, truthfully account for and pay over New York State withholding taxes due from said corporation for the period December 1, 1973 through March 23, 1974; therefore, the 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 Pietro Libardi is denied and Notice of Deficiency issued on January 27, 1975 is sustained.

DATED: Albany, New York
January 25, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER