

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
AGNES M. MC HUGH  
and PAUL J. MORETON  
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) ~~xxx Period(x)~~  
1964 and 1965.

AFFIDAVIT OF MAILING

State of New York  
County of Albany

Violet Walker, 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 24th day of June, 1977, she served the within  
Notice of Decision by (certified) mail upon Agnes M. McHugh

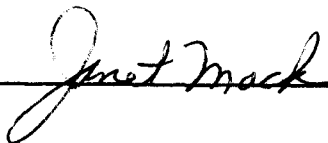
(~~representative of~~) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Agnes M. McHugh  
194-15 F65 Crescent  
Flushing, New York 11365

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~~  
~~xxx 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

24th day of June, 1977.

  
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Notice of Decision by (certified) mail upon Paul J. Moreton

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

Mr. Paul J. Moreton  
52 Juniper Drive, RD #2  
Clifton Park, New York 12065

and by depositing same enclosed in a postpaid properly addressed wrapper in a  
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That deponent further says that the said addressee is the (~~representative~~  
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Sworn to before me this

24th day of June, 1977.

Janet Mack

Violet Walker



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 24, 1977

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

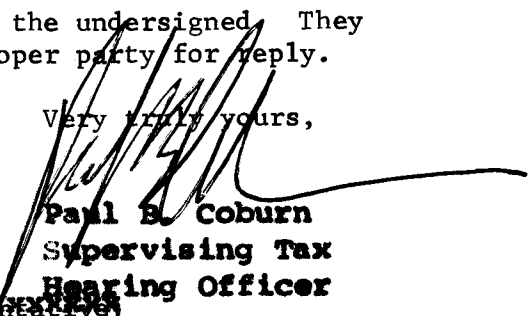
Agnes M. McHugh  
194-15 F65 Crescent  
Flushing, New York 11365

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

Please take further notice that pursuant to  
Section(4) **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 OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

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

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52 Juniper Drive, RD #2  
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Enc.

**Paul B. Coburn**  
**Supervising Tax**  
**Hearing Officer**  
cc: ~~Mr. James J. Murphy, Jr., President~~

Taxing Bureau's Representative:

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
AGNES M. Mc HUGH :  
and PAUL J. MORETON : DECISION  
for Redetermination of a Deficiency or :  
for Refund of Personal Income Tax under :  
Article 22 of the Tax Law for the Years :  
1964 and 1965. :

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Petitioners, Agnes M. McHugh, 194-15 F65 Crescent,  
Flushing, New York 11365 and Paul J. Moreton, 52 Juniper  
Drive, RD #2, Clifton Park, New York 12065, filed petitions  
for redetermination of a deficiency or for refund of personal  
income tax under Article 22 of the Tax Law for the years 1964  
and 1965. (File Nos. 01486 and 01487).

A formal hearing was held before L. Robert Leisner,  
Hearing Officer, at the offices of the State Tax Commission,  
Building #9, State Campus, Albany, New York, on April 1, 1976  
at 9:15 A.M. The petitioners appeared pro se. The Income  
Tax Bureau appeared by Peter Crotty, Esq., (James A. Scott, Esq.,  
of counsel).

ISSUES

I. Whether the petitioners, Agnes M. McHugh and Paul J.  
Moreton, were persons required to collect, truthfully account  
for and pay over the withholding taxes of the employees of the

Moreton Contracting Corp., within the meaning and intent of section 685(1) of the Tax Law for the years 1964 and 1965.

II. Whether the petitioners, Agnes M. McHugh and Paul J. Moreton, willfully failed to collect, truthfully account for and pay over the withholding taxes of Moreton Contracting Corp. within the meaning and intent of section 685(g) of the Tax Law for the years 1964 and 1965.

III. Whether petitioner, Paul J. Moreton, was a person required to collect, truthfully account for and pay over the withholding taxes of the employees of Neff Lathing Company, Incorporated, within the meaning and intent of section 685(1) of the Tax Law for the year 1965.

IV. Whether petitioner, Paul J. Moreton, willfully failed to collect, truthfully account for and pay over the withholding taxes of Neff Lathing Company, Incorporated, within the meaning and intent of section 685(g) of the Tax Law for the year 1965.

#### FINDINGS OF FACT

1. Moreton Contracting Corp. failed to pay over to the Income Tax Bureau the New York State personal income taxes withheld from its employees for the years 1964 and 1965 in the sum of \$4,081.00 and \$1,123.20, respectively. The corporation is now defunct.

2. Neff Lathing Company, Incorporated, failed to pay over to the Income Tax Bureau the New York State personal income taxes withheld from its employees for the year 1965 in the sum of \$2,867.00, and a balance of \$728.10 is due on that amount. The corporation is now defunct.

3. On June 30, 1969, the Income Tax Bureau issued a Statement of Deficiency against petitioner, Agnes M. McHugh, imposing a penalty equal to the amount of New York State withholding taxes due from Moreton Contracting Corp. for the period July 1, 1964 through September 30, 1964, upon the grounds that she was a person required to collect, truthfully account for and pay over said taxes, and that she willfully failed to do so. Accordingly, a Notice of Deficiency was issued totalling \$4,081.60.

4. On March 31, 1969, the Income Tax Bureau issued a Statement of Deficiency against the petitioner, Agnes M. McHugh, imposing a penalty equal to the amount of New York State withholding taxes due from Moreton Contracting Corp. for the period January 1, 1965 through March 31, 1965, upon the grounds that she was a person required to collect, truthfully account for and pay over said taxes, and that she willfully failed to do so. Accordingly, a Notice of Deficiency was issued totalling \$1,123.00.

5. On April 11, 1969, the Income Tax Bureau issued a Statement of Deficiency against the petitioner, Paul J. Moreton, imposing a penalty equal to the amount of New York State withholding taxes due from Neff Lathing Company, Incorporated, for the period January 1, 1965 through December 31, 1965, with a balance due of \$728.10, 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 was issued totalling \$728.10.

6. On June 30, 1969, the Income Tax Bureau issued a Statement of Deficiency against the petitioner, Paul J. Moreton, imposing a penalty equal to the amount of New York State withholding taxes due from Moreton Contracting Corp. for the period July 1, 1964 through September 30, 1964, 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 was issued totalling \$4,081.60.

7. On December 29, 1969, the Income Tax Bureau issued a Statement of Deficiency against the petitioner, Paul J. Moreton, imposing a penalty equal to the amount of New York State withholding taxes due from Moreton Contracting Corp. for the period January 1, 1965 through March 31, 1965, 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 was issued totalling \$1,123.20.

8. Neff Lathing Company, Incorporated, was the parent company of Moreton Contracting Corp. during the years in issue. The latter corporation had no assets and was a conduit for facilitating the business of subcontracting of construction work carried on by the parent corporation. Lilian B. Moreton was the sole shareholder of both corporations until her death in July of 1965. She had been president of both corporations until her death.

9. Petitioner, Agnes M. McHugh, was secretary-treasurer of both corporations, and was empowered to sign checks for the corporation during the years in issue.

10. Petitioner, Paul J. Moreton, was a vice-president of both corporations during the years in issue.

11. Petitioner, Agnes M. McHugh, did the payroll bookkeeping for both corporations during the years in issue.

12. Petitioner, Paul J. Moreton, would collect cash from the various general contractors and pay it to the employees of Moreton Contracting Corp. during the years in issue. Moreton Contracting Corp. failed to arrange for payments of withholding taxes of its employees out of these cash payments.

13. Upon the death of Lilian B. Moreton, the Chemical Bank took all monies subsequently deposited in the account of Neff Lathing Company, Incorporated, in satisfaction of an outstanding loan to it. The Moreton Contracting Corp. had no bank accounts during the years in issue.

CONCLUSIONS OF LAW

A. That petitioners, Agnes M. McHugh and Paul J. Moreton, as officers of Moreton Contracting Corp. were persons required to collect, truthfully account for and pay over New York State withholding taxes due from said corporation for the years 1964 and 1965, within the meaning and intent of section 685(1) of the Tax Law.

B. That since petitioners, Agnes M. McHugh and Paul J. Moreton, willfully failed or caused Moreton Contracting Corp. to willfully fail to collect, truthfully account for and pay over New York State withholding taxes due in the years 1964 and 1965, therefore penalties equal to the amount of unpaid withholding taxes were properly assessed against them, within the meaning and intent of section 685(g) of the Tax Law.

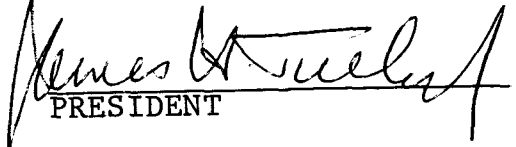
C. That petitioner, Paul J. Moreton, as an officer of Neff Lathing Company, Incorporated, was a person required to collect, truthfully account for and pay over New York State withholding taxes due from said corporation for the year 1965, within the meaning and intent of section 685(1) of the Tax Law.

D. That since petitioner, Paul J. Moreton, willfully failed or caused Neff Lathing Company, Incorporated, to willfully fail to collect, truthfully account for and pay over New York State withholding taxes due from said corporation for the year 1965, therefore a penalty equal to the total amount of the unpaid withholding taxes was properly assessed against him, within the meaning and intent of section 685(g) of the Tax Law.

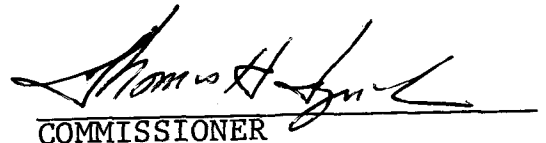
E. That the petitions of Agnes M. McHugh and Paul J. Moreton are denied. The notices of deficiency issued March 31, 1969 and June 30, 1969 against Agnes M. McHugh, together with the notices of deficiency issued April 11, 1969, June 30, 1969 and December 29, 1969 against Paul J. Moreton are sustained.

DATED: Albany, New York  
June 24, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER