

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JAMES MAC LEAN

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)~~ :
1966 and 1967.

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 26th day of August, 1977, she served the within Notice of Decision by (certified) mail upon Victor M. Meyers

(representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed

as follows: Victor M. Meyers, Esq.
Rapport & Rapport
434 Union Street
Hudson, New York 12534

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
26th day of August, 1977.

Marsina Donnini

Janet Back

STATE OF NEW YORK
STATE TAX COMMISSION

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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)~~
1966 and 1967.

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 26th day of August, 1977, she served the within Notice of Decision by (certified) mail upon James MacLean

~~(representative of)~~ the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:
Mr. James MacLean
RD #1
Hudson, New York 12534

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
26th day of August, 1977.

Marsina Donnini

Janet 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 26, 1977

Mr. James MacLean
RD #1
Hudson, New York 12534

Dear Mr. MacLean:

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 ~~(b)~~ **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

In the Matter of the Petition :
of :
JAMES MacLEAN : DECISION
for Redetermination of a Deficiency or :
for Refund of Personal Income Tax under :
Article 22 of the Tax Law for the Years :
1966 and 1967. :

Petitioner, James MacLean, RD #1, Hudson, New York, 12534, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1966 and 1967. (File No. 15301).

A formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, Building 9, State Campus, Albany, New York, on December 14, 1976 at 1:15 P.M. The petitioner appeared by Rapport & Rapport, Esqs. (Victor M. Meyers, Esq., of counsel). The Income Tax Bureau appeared by Peter Crotty, Esq. (Harris C. Sitrin, Esq., of counsel).

ISSUE

Whether petitioner, James MacLean, was liable as a responsible person for willfully failing to withhold income taxes from the payroll of MacLean Construction Corporation for the years 1966 and 1967.

FINDINGS OF FACT

1. A Statement of Deficiency alleging deficiencies in income taxes withheld from the payrolls of MacLean Construction Corporation was issued to petitioner on June 30, 1969. The deficiencies set forth thereon were as follows:

WITHHOLDING TAX PERIOD	AMOUNT
1/1/66 - 3/31/66	\$ 640.40
10/1/66 - 12/31/66	3,854.61
1/1/67 - 3/31/67	3,503.10
4/1/67 - 6/30/67	5,547.08
7/1/67 - 9/30/67	4,194.25
	<u>\$17,739.44</u>

2. A Notice of Deficiency for failure to withhold income taxes from the payrolls of MacLean Construction Corporation for the years 1966 and 1967, was issued to petitioner on June 30, 1969 under the File No. 13-1977496.

3. On December 1, 1972, Carmi Rapport, of the firm Rapport & Rapport, Esqs., attorneys for the petitioners herein, wrote the Warrant and Collection Section of the New York State Department of Taxation and Finance (in lieu of filing a petition on behalf of petitioners), requesting an appropriate hearing before the necessary parties for a review of why this warrant lodged against petitioner, James MacLean, should not be discharged.

4. Petitioner, James MacLean, was an incorporator of MacLean Construction Corporation.

5. From its inception and through and including the years 1966 to 1967, MacLean Construction Corporation never had a corporate meeting at which its stock was issued or its officers and directors elected.

6. Petitioner was listed as an officer of MacLean Construction Corporation upon its corporate franchise tax return, to wit, its treasurer.

7. Petitioner was an employee of MacLean Construction Corporation during the years 1966 to 1967, being employed as a supervisor on the Ford Foundation project in New York City.

8. Petitioner never made out the payroll for MacLean Construction, nor did he ever collect or pay over withholding tax, although he was authorized to do so.

9. Petitioner was authorized to sign checks for the MacLean Construction Corporation.

10. No withholding taxes were collected or paid over by MacLean Construction Corporation, or by the petitioner for the years 1966 to 1967.

11. MacLean Construction Corporation is now insolvent and out of business.

CONCLUSIONS OF LAW

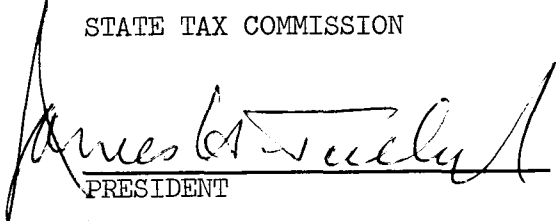
A. That petitioner, James MacLean, as an officer of MacLean Construction Corporation was a person required to collect, truthfully account for and pay over New York State withholding taxes due from said corporation for the period from January 1, 1966 through September 30, 1967 in accordance with the meaning and intent of sections 674 and 685(n) of the Tax Law.

B. That since petitioner, James MacLean, willfully failed to, or caused MacLean Construction Corporation to willfully fail to collect, truthfully account for and pay over New York State withholding taxes due from said corporation for the period from January 1, 1966 through September 30, 1967, 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 sections 685(g) of the Tax Law.

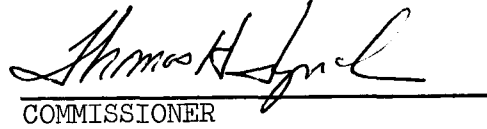
C. That the petition of James MacLean is denied and the Notice of Deficiency issued June 30, 1969 is sustained.

DATED: Albany, New York
August 26, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER