

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

PHILIP A. UZIELLI

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)~~ 1967, :  
1968, 1969, 1970 and 1971.

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 16th day of August , 1977, she served the within Notice of Decision by (certified) mail upon Philip A. Uzielli

(~~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 A. Uzielli  
345 East 57th Street  
New York, New York 10022

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  
16th day of August , 1977.

Marsina Donnini

Janet Mack

In the Matter of the Petition

of

PHILIP A. UZIELLI

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
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1968, 1969, 1970 and 1971.

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 16th day of August, 1977, she served the within Notice of Decision by (certified) mail upon Lawrence E. Brinn

(representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Lawrence E. Brinn, Esq.  
The Sherry-Netherland  
781 Fifth Avenue  
New York, New York 10022

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  
16th day of August, 1977.

Marsina Donnini

Janet Mack



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

**August 16, 1977**

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

**Mr. Philip A. Uzielli**  
**345 East 57th Street**  
**New York, New York 10022**

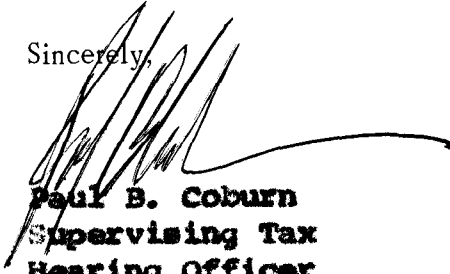
**Dear Mr. Uzielli:**

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 **(a) 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 A. UZIELLI  
for Redetermination of a Deficiency  
or Refund of Personal Income Tax  
under Article 22 of the Tax Law for  
the Years 1967, 1968, 1969, 1970 and 1971:

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DECISION

Petitioner, Philip A. Uzielli, residing at 345 East 57th Street, New York, New York 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 years 1967, 1968, 1969, 1970 and 1971. (File No. 00547).

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 January 12, 1977 at 1:15 P.M. Petitioner appeared by Lawrence E. Brinn, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Richard Kaufman, Esq. of counsel).

ISSUES

I. Whether petitioner, Philip A. Uzielli, is liable for unpaid New York State withholding taxes due from El Tiempo, Inc. for the years 1967, 1968, 1969, 1970 and 1971.

II. Whether the petitioner, Philip A. Uzielli, timely filed his petition for redetermination of the assessed deficiency.

FINDINGS OF FACT

1. El Tiempo, Inc. failed to pay over to the Income Tax Bureau \$36,351.98 of New York State personal income taxes withheld from its employees for the years 1967, 1968, 1969, 1970 and 1971.

2. Petitioner, Philip A. Uzielli (hereinafter "Uzielli") was a full time employee of Merck & Co., a pharmaceutical manufacturer at 110 Church Street, New York, New York, from October, 1965 through April 30, 1970. His title was director of Operational Services International. From May 1, 1970 to date, petitioner, Uzielli, has been employed full time as a partner of G. L. Ohrstrom & Co., a private capital investment firm at 540 Madison Avenue, New York City. Merck & Co. moved the division in which petitioner, Uzielli, had been employed to its corporate headquarters in Rahway New Jersey in December, 1970.

In mid 1968, petitioner, Uzielli, was requested by William Mellon Hitchcock, the largest stockholder in El Tiempo, Inc., to represent him on the Board of Directors of the corporation.

The title of President and Publisher was bestowed upon petitioner, Uzielli. He remained as director and president of El Tiempo, Inc. until April, 1970, when he resigned.

4. Throughout 1968 and the first half of 1969, one Stanley Ross in varying capacities as Secretary-Treasurer, Vice-President and Editor-in-Chief was in complete control of the day-to-day operations and financial administration of El Tiempo Inc. He had the responsibility for withholding taxes from employees, and of making and filing income tax withholding reports.

5. Petitioner, Uzielli, did not have authority to sign checks and had no voice in making decisions as to paying creditors. Throughout the last half of 1969, 1970 and 1971, Einar O. Petersen, Jr. in varying capacities as Vice-President, President and Publisher, and Editor-in-Chief was in complete control of day-to-day operations and financial administration of El Tiempo, Inc., including the withholding of income taxes from employees, the filing of tax reports, and the payment over of income taxes withheld to the New York State Income Tax Bureau.

6. Petitioner, Uzielli, owned no stock in El Tiempo, Inc., received no remuneration and had no knowledge of, nor participation in, the daily operations of El Tiempo, Inc. during the period he was a director from mid 1968 until April, 1970. He was assured by Ross and his successor Petersen that all taxes were being paid.

7. On May 24, 1971, the Income Tax Bureau issued a Statement of Deficiency addressed to petitioner, Uzielli, at 110 Church

Street, New York City, New York assessing him \$36,351.98 as a penalty under section 685(g) of the Tax Law for the amount of the tax withheld as a person who, being under a duty to collect and pay over the tax imposed by the Income Tax Law, willfully failed to do so. That letter, sent by certified mail return receipt requested was returned undelivered by the U. S. Post Office stamped "Unknown."

8. On July 3, 1975, the State Tax Commission issued a garnishee on the wages of the petitioner, Uzielli, addressed to his employer, G. L. Ohrstrom & Co. at 540 Madison Avenue, New York City, and to petitioner, Uzielli, at his residence, 196 East 75th Street, New York, New York.

9. On August 21, 1975, petitioner, Uzielli, filed a petition for redetermination of the deficiency assessed against him by the notice dated May 24, 1971.

10. Petitioner, Uzielli, averred that his first personal knowledge that the Income Tax Bureau had assessed a deficiency against him was the service of the sheriff's warrant upon him in July, 1975. He stated that he had been a continuous resident of New York City throughout the period 1967-71 and had filed New York State personal income tax returns from 10 Gracie Square, New York City in 1967 and 1968, and from 196 East 75 Street, New York City, in 1969, 1970, 1971 and 1972. Petitioner stated he had been one

of 30,000 employees of Merck & Co. at 110 Church Street, New York City and that a letter addressed to him (not even in care of Merck & Co.) had scant chance of reaching him long after the firm had moved from the premises. Photostatic copies of the Forms W-2 for withholding tax showed the same addresses indicated for the years involved. Petitioner, Uzielli, allegedly had a telephone listing in New York, New York, for all the years 1967-71.

11. The income tax withheld from employees of El Tiempo, Inc., amounting to \$36,351.98 has not yet been paid.

CONCLUSIONS OF LAW

A. That petitioner, Philip A. Uzielli, although an officer of El Tiempo, Inc., was not a person under a duty to perform the task of collecting and paying the withholding taxes. The failure to pay over the withholding taxes was not a willful attempt in any matter to evade or defeat the tax or its payment.

B. That since petitioner, Philip A. Uzielli, did not willfully fail or cause El Tiempo, Inc., to willfully fail to collect, truthfully account for, and pay over New York State withholding taxes due from said corporation for the years 1967, 1968, 1969, 1970 and 1971, therefore a penalty equal to the total amount of the unpaid withholding taxes was improperly assessed against him in accordance with the meaning and intent of section 685(g) of the Tax Law.

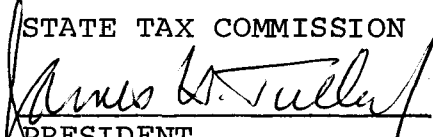
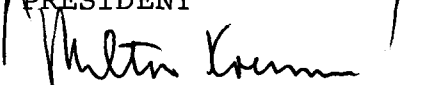



C. That even if the petitioner, Philip A. Uzielli, had been a person under a duty to collect and pay over income tax withheld, and had willfully failed to do so, his petition would have had to be granted since service of a Notice of Deficiency dated May 24, 1971 was not effected until the time within which to make an assessment had passed. Tax Law section 681(a) provides that "A notice of deficiency shall be mailed by certified or registered mail to the taxpayer at his last known address in or out of this state."

Petitioner filed New York State income tax returns in each of the years in question. His correct home address was known or should have been known to the Income Tax Bureau. Petitioner's first official notice of the alleged deficiency came in July 1975 when he was served with a garnishee. Section 683(a) of the Tax Law requires that any tax under Article 22 shall shall be assessed within three years after the return was filed.

D. That the petition of Philip A. Uzielli is granted and the Notice of Deficiency issued May 24, 1971 is cancelled.

DATED: Albany, New York  
August 16, 1977

STATE TAX COMMISSION  
  
PRESIDENT  
  
COMMISSIONER  
  
COMMISSIONER