

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

BAYARD G. GARDINEER, JR.

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or
a Revision of a Determination or a Refund
of Personal Income
Taxes under Article (a) 22 of the
Tax Law for the Year ~~(xxxx) Period(s)~~
1968

State of New York
County of Albany

John Huhn, 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 1 day of September, 1978, she served the within

Notice of Decision by (certified) mail upon Bayard G.
Gardineer, Jr.

~~(representative of)~~ the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Bayard G. Gardineer, Jr.
937 2nd Street
Peekskill, New York 10566

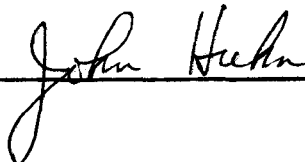
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the ~~(representative of)~~
~~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

1 day of September, 1978.





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

BAYARD G. GARDINEER, JR.

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article (*) 22 of the :
Tax Law for the Year (~~six~~ ~~Period~~) :
1968

State of New York
County of Albany

John Huhn , 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 1 day of September , 1978, she served the within
Notice of Decision by (certified) mail upon Frank H. Blancato, Esq.

(representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Frank M. Blancato, Esq.
108 North Division St.
Peekskill, NY 10566

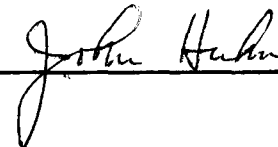
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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

1 day of September , 1978.







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

September 1, 1978

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

Bayard G. Gardineer, Jr.
937 2nd Street
Peekskill, New York 10566

Dear Mr. Gardineer:

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,

Michael Alexander
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 :
BAYARD G. GARDINEER, JR. : DECISION
for Redetermination of a Deficiency or :
for Refund of Personal Income Tax under :
Article 22 of the Tax Law for the Year :
1968. :

Petitioner, Bayard G. Gardineer, Jr., 937 2nd Street, Peekskill, New York 10566, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1968 (File No. 13947).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on August 26, 1977 at 3:30 P.M. Petitioner appeared by Frank H. Blancato, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Francis Cosgrove, Esq. of Counsel).

ISSUE

Whether petitioner is liable to a penalty equal to unpaid New York State withholding taxes due from Sigmatech Corporation for 1968.

FINDINGS OF FACT

1. The Sigmatech Corporation failed to pay over New York State income taxes withheld from the wages of its employees for 1968 in the amount of \$7,137.30

2. On July 31, 1972, the Income Tax Bureau issued a Statement of Deficiency against petitioner, Bayard G. Gardineer, Jr., equal to the amount of New York State withholding taxes due from Sigmatech Corporation for 1968. The Statement was issued on the grounds that petitioner was a person required to collect, truthfully account for and pay over said taxes and that he willfully failed to do so. Accordingly, the Income Tax Bureau issued a Notice of Deficiency against him in the amount of \$7,137.30.

3. Petitioner, Bayard G. Gardineer, Jr., was vice-president of Sigmatech Corporation when it was formed in 1966 and he continued in that office until the middle of 1968. Petitioner (as a stockholder) and the other stockholders of Sigmatech sold their interest in said corporation to Guenther Systems, Inc. on or about July 17, 1968. Guenther Systems, Inc. filed for bankruptcy in 1971. Petitioner was aware of the tax requirements of New York State, namely that withholding taxes were being withheld, but that the Sigmatech Corporation failed to remit said tax.

4. Petitioner was authorized to sign both checks and loan agreements for Sigmatech. He negotiated a loan to satisfy tax debts and Federal taxes were paid. The money withheld from Sigmatech's employees was used to run the business, as was some of the money that was borrowed. Petitioner continued to work for Guenther Systems, Inc. until the end of 1968.

CONCLUSIONS OF LAW

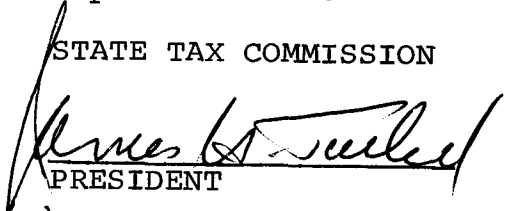
A. That petitioner, Bayard G. Gardineer, Jr., was a person required to collect, truthfully account for and pay over New York State withholding taxes due from Sigmatech Corporation for the period January 1, 1968 to June 30, 1968 in the amount of \$3,751.40, in accordance with the meaning and intent of section 685(n) of the Tax Law; that he willfully failed or caused Sigmatech Corporation to willfully fail to collect, truthfully account for and pay over New York State withholding taxes due for said period; therefore, petitioner is liable for a penalty equal to the amount of unpaid withholding tax due, within the meaning and intent of section 685(g) of the Tax Law.

B. That the petition of Bayard G. Gardineer, Jr. is granted to the extent of reducing the amount of the Notice of Deficiency issued July 31, 1972 from \$7,137.30 to \$3,751.40, but that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

September 1, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER