

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JOSEPH L. PERROTTA

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)~~ Period ~~(s)~~ :
July 1, 1972 through December 31, 1972.

State of New York
County of Albany

John Huhn, being duly sworn, deposes and says that
~~he~~ is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 17th day of April, 1978, ~~he~~ served the within
Notice of Decision by (certified) mail upon Joseph L. Perrotta

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

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

as follows: Mr. Joseph L. Perrotta
1147 Olympia Boulevard
Staten Island, New York 10306

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)~~
~~XXXXXX~~ petitioner herein and that the address set forth on said wrapper is the
last known address of the ~~(representative of)~~ petitioner.

Sworn to before me this

17th day of April, 1978.







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

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

April 17, 1978

Mr. Joseph L. Perrotta
1147 Olympia Boulevard
Staten Island, New York 10306

Dear Mr. Perrotta:

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 ~~(x)~~ **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,

Joseph Chyrywat
Hearing Examiner

cc: ~~Refrigerator's Representative~~

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
JOSEPH L. PERROTTA : DECISION
for Redetermination of a Deficiency or :
for Refund of Personal Income Tax under :
Article 22 of the Tax Law for the Period :
July 1, 1972 through December 31, 1972. :
:

Petitioner, Joseph L. Perrotta, 1147 Olympia Boulevard, Staten Island, New York 10306, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the period July 1, 1972 through December 31, 1972 (File No. 14188).

A small claims hearing was held before Philip Mercurio, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on July 18, 1977 at 9:15 A.M. The petitioner appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq. (Irving Atkins, Esq., of counsel).

ISSUE

Whether petitioner is subject to a penalty under section 685(g) of the Tax Law, as a person who failed to collect, truthfully account for and pay over New York State withholding taxes due from Oral-Visual-Medical, Inc. for the period July 1, 1972 to December 31, 1972.

FINDINGS OF FACT

1. On December 22, 1975, the Income Tax Bureau issued both a Statement and Notice of Deficiency against petitioner, Joseph L. Perrotta, imposing a penalty equal to the amount of unpaid New York State withholding taxes due from Oral-Visual-Medical, Inc. for the period July 1, 1972 to December 31, 1972.

2. Petitioner became president of Oral-Visual-Medical, Inc. on January 3, 1973. Prior to this, petitioner was not affiliated with the aforesaid firm.

3. Petitioner, Joseph L. Perrotta, was president of the aforesaid firm from January 3, 1973 to mid-August 1973, at which time he resigned.

CONCLUSIONS OF LAW

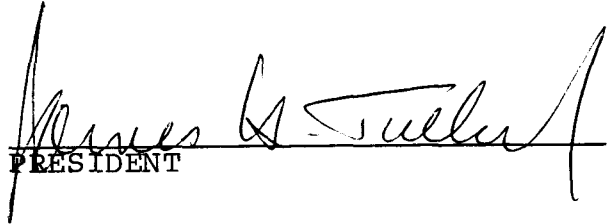
A. That petitioner, Joseph L. Perrotta, was not a person required to collect, truthfully account for and pay over New York State withholding taxes due from Oral-Visual-Medical, Inc. for the period July 1, 1972 to December 31, 1972, in accordance with the meaning and intent of section 685(n) of the Tax Law.


B. That petitioner, Joseph L. Perrotta, did not willfully fail or cause Oral-Visual-Medical, Inc. to willfully fail to collect, truthfully account for and pay over New York State withholding taxes as previously stated, within the meaning and intent of section 685(g) of the Tax Law.

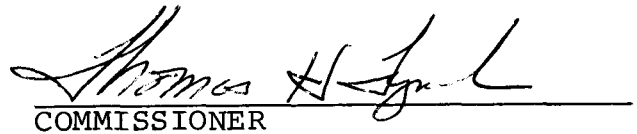
C. That the petition of Joseph L. Perrotta is granted and the Notice of Deficiency issued December 22, 1975 in the sum of \$1,569.90 is cancelled.

DATED: Albany, New York
April 17, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER