

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
FRANCES PUDDU

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income Tax :
Taxes under Article(s) 22 of the :
Tax Law for the Year(s) ~~XXXXXX~~ :
1972, 1973 and 1974

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 13 day of September, 1978, he served the within
Notice of Decision by (certified) mail upon Frances Puddu

~~XXXXXX~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Frances Puddu
820 Ocean Parkway
Brooklyn, New York 11230

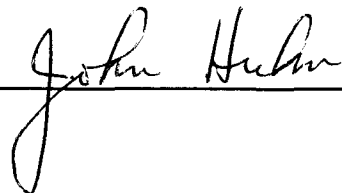
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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

13 day of September, 1978.





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In the Matter of the Petition

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FRANCES PUDDU

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income Tax :
Taxes under Article ~~20~~ 22 of the :
Tax Law for the Year(s) ~~1972, 1973 and 1974~~ :
1972, 1973 and 1974

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 13 day of September , 1978 , he served the within
Notice of Decision by (certified) mail upon Howard L. Kleiger, Esq.

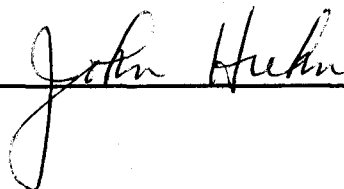
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Howard L. Kleiger, Esq.
Kleiger & Kleiger
250 Broadway
New York, New York 10007
and by depositing same enclosed in a postpaid properly addressed wrapper 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

13 day of September , 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

September 13, 1978

**Frances Puddu
820 Ocean Parkway
Brooklyn, New York 11230**

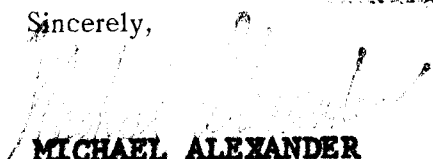
Dear Mrs. Puddu:

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,


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 Petitions :
of :
FRANCES PUDDU : DECISION
for Redetermination of Deficiencies or :
for Refund of Personal Income Tax under :
Article 22 of the Tax Law for the Years :
1972, 1973 and 1974. :
:

Petitioner, Frances Puddu, 820 Ocean Parkway, Brooklyn, New York 11230, filed petitions for redetermination of deficiencies or for refund of personal income tax under Article 22 of the Tax Law for the years 1972, 1973 and 1974 (File Nos. 12750 and 16202).

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 October 18, 1977 at 2:45 P.M. Petitioner appeared by Howard L. Kleiger, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Frank Levitt, Esq., of counsel).

ISSUE

Whether petitioner was subject to a penalty equal to unpaid New York State withholding taxes due from Puddu & Martinelli, Inc. for the years 1972, 1973 and 1974.

FINDINGS OF FACT

1. On April 11, 1975 and on June 28, 1976, the Income Tax Bureau issued notices of deficiency against petitioner, Frances Puddu, imposing a penalty in the amount of \$11,995.53 in accordance with section 685(g) of the Tax Law, as a person who willfully failed to collect, truthfully account for and pay over personal income taxes withheld by Puddu & Martinelli, Inc. from its employees' wages. During the periods in issue, said company failed to turn over withholding taxes in the amount of \$11,995.53.

2. Petitioner, Frances Puddu, succeeded to the interest of her husband in Puddu & Martinelli, Inc., following his death in August of 1972. Her son, Anthony Puddu, ran the business until June of 1973, at which time her son-in-law, Marshall Wittson, took over the management of the business. Until June 12, 1974, petitioner owned 100 shares of stock of Puddu & Martinelli, Inc., at which time said shares were turned over to her son-in-law. Her New York State tax return for 1973 listed her occupation as "office manager." She signed the sales and use tax returns as president for the periods June 1, 1973 to May 31, 1974 and December 1, 1973 to February 24, 1974. On February 13, 1973, petitioner signed as president the State Corporation Franchise Tax Report for the period November 1, 1971 ending October 31, 1972. On September 4, 1974, she signed another such report for the period November 1, 1972 ending October 31, 1973. The Internal Revenue Service assessed her as a responsible officer of Puddu & Martinelli, Inc.

CONCLUSIONS OF LAW

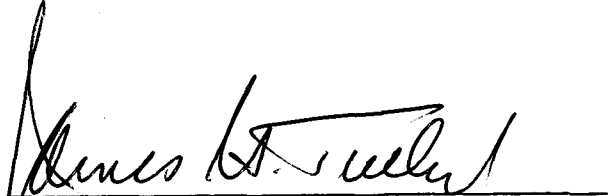
A. That petitioner, Frances Puddu, has not sustained the burden of proof required (in accordance with section 689(e) of the Tax Law) to establish that she was not a person who willfully failed to collect and pay over personal income taxes withheld by Puddu & Martinelli, Inc., within the meaning and intent of sections 685(g) and 685(n) of the Tax Law.

B. That petitioner, Frances Puddu, an officer of Puddu & Martinelli, Inc. was a person required to collect, truthfully account for and pay over New York State withholding taxes due from Puddu & Martinelli, Inc. and that she willfully failed to do so, in accordance with the meaning and intent of sections 685(g) and 685(n) of the Tax Law.

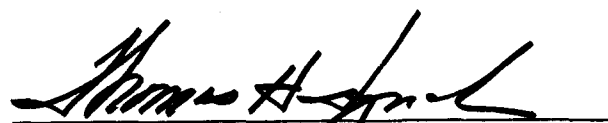
C. That the petitions of Frances Puddu are denied and the notices of deficiency issued April 11, 1975 and June 28, 1976 are sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York
September 13, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER