

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Ciro E. Cadalso, Jr. :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of :
Personal Income Tax :
under Article 22 of the Tax Law :
for the Year 1971. :

State of New York
County of Albany

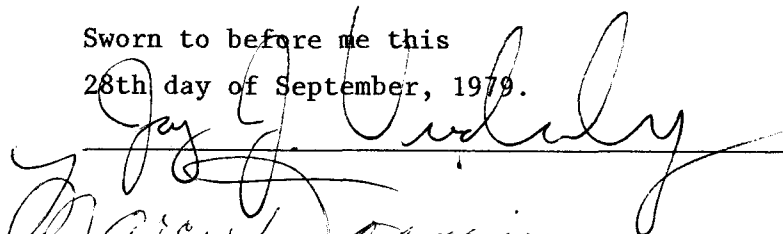
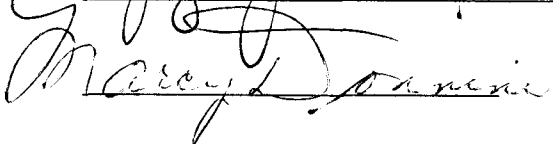
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 28th day of September, 1979, he served the within notice of Decision by certified mail upon Ciro E. Cadalso, Jr., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Ciro E. Cadalso, Jr.
19 Marjorie Dr.
Albany, NY 12203

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 petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
28th day of September, 1979.

STATE OF NEW YORK
STATE TAX COMMISSION

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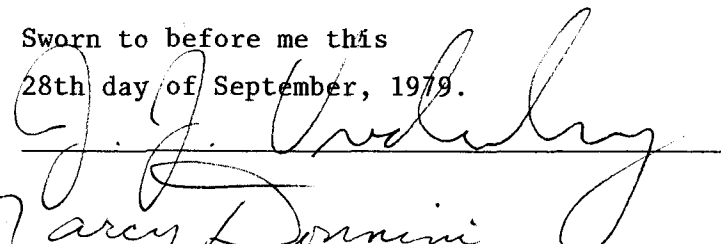
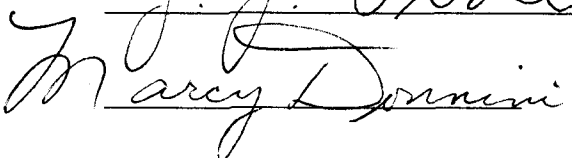
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 28th day of September, 1979, he served the within notice of Decision by certified mail upon Edward A. McMahon the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. Edward A. McMahon
29 Elk St.
Albany, NY 12207

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
28th day of September, 1979.



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

STATE TAX COMMISSION

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

JOHN J. SOLLECITO
DIRECTOR

Telephone: (518) 457-1723

September 28, 1979

Ciro E. Cadalso, Jr.
19 Marjorie Dr.
Albany, NY 12203

Dear Mr. Cadalso:

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(s) 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,

A handwritten signature in cursive script, appearing to read "John J. Sollecito".

cc: Petitioner's Representative
Edward A. McMahon
29 Elk St.
Albany, NY 12207
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
CIRO E. CADALSO, JR.	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Year	:	
1971.	:	

Petitioner, Ciro E. Cadalso, Jr., 19 Marjorie Drive, Albany, New York 12203, 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 1971 (File No. 14173).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, Building #9, State Campus, Albany, New York, on December 15, 1978 at 9:15 A.M.

Petitioner appeared by Edward A. McMahon, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Barry M. Bresler, and Kathy L. Sanderson, Esqs., of counsel).

At the hearing, petitioner advised the Hearing Officer that the former desired to waive the balance of the small claims hearing and to submit the case to the State Tax Commission, based on the entire record contained in the file. After considering said record, the Commission renders the following decision.

ISSUE

Whether a Notice of Deficiency and a Notice and Demand for Payment of Personal and Unincorporated Business Taxes under Jeopardy Assessment issued to petitioner on February 19, 1976 and imposing a penalty pursuant to section 685(g)

of the Tax Law, were issued within the period of limitations set forth in section 683 of the Tax Law.

FINDINGS OF FACT

1. Petitioner, Ciro E. Cadalso, Jr., was president of RJB, Inc., which did business as Northern Star Market.
2. During the period January through November of 1971, Northern Star Market-RJB, Inc., a New York employer, deducted and withheld New York income taxes from the salaries which were paid to its employees in the sum of \$667.72.
3. On February 4, 1972, the Income Tax Bureau received withholding returns, Form IT-2101-M, from RJB, Inc. for the periods January through November of 1971. The returns indicated a total of \$667.72 which was withheld in taxes. No taxes were remitted with the IT-2101-M returns.
4. On May 3, 1972, a Notice and Demand for Payment of Withholding Tax Due was issued against Northern Star Market-RJB, Inc., in care of Richard J. Cadalso, at petitioner's home address.
5. On February 19, 1976, a Notice of Deficiency and a Notice and Demand for Payment of Personal and Unincorporated Business Taxes under Jeopardy Assessment were issued against petitioner, Ciro E. Cadalso, Jr., imposing a penalty pursuant to section 685(g) of the Tax Law.
6. Petitioner did not argue that he was not a person required to collect, truthfully account for and pay over New York State withholding taxes due from Northern Star Market-RJB, Inc., or that he willfully failed or caused Northern Star Market-RJB, Inc. to willfully fail to collect, truthfully account for and pay over such taxes for the periods at issue, within the meaning and intent of subsections (g) and (n) of section 685 of the Tax Law. He contended, however, that the period of limitations set forth in section 683 of the Tax Law had expired.

CONCLUSIONS OF LAW

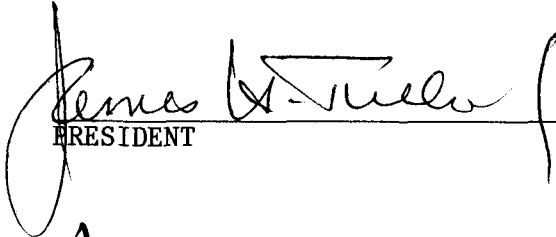
A. That the Notice of Deficiency and the Notice and Demand for Payment of Personal and Unincorporated Business Taxes under Jeopardy Assessment issued on February 19, 1976 were issued after the expiration of the three-year period of limitation set forth in section 683 of the Tax Law.

B. That the jeopardy assessment is abated, the Notice of Deficiency is cancelled and the petition of Ciro E. Cadalso, Jr. is granted.

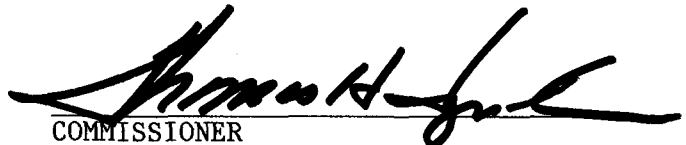
DATED: Albany, New York

STATE TAX COMMISSION

SEP 28 1979


PRESIDENT


COMMISSIONER


COMMISSIONER