

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

John Logsdon :

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 Years 1973-1975. :

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 19th day of October, 1979, he served the within notice of Decision by certified mail upon John Logsdon, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

John Logsdon

7 Leigh St.

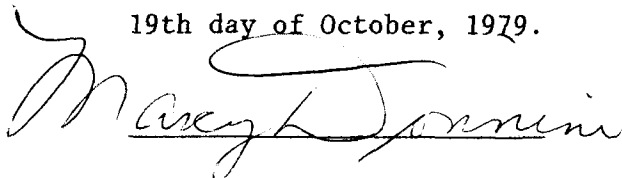
Huntington, NY 11743

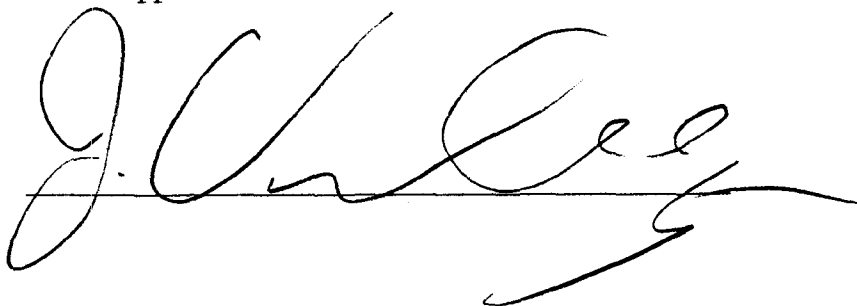
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

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

19th day of October, 1979.


Mary L. Jorren



STATE OF NEW YORK
STATE TAX COMMISSION

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of
John Logsdon :

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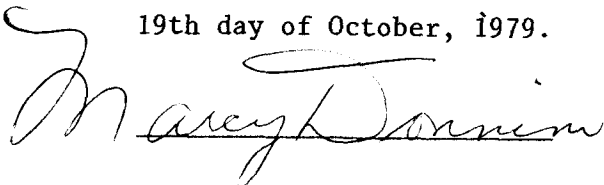
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 19th day of October, 1979, he served the within notice of Decision by certified mail upon Anthony Curto the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

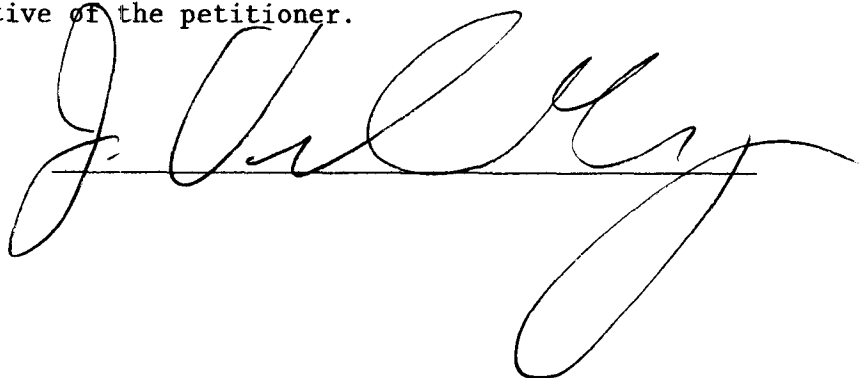
Mr. Anthony Curto
Curto, Armstrong, Meservey & Waller
205 E. Main St.
Huntington, NY

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
19th day of October, 1979.


Nancy Donnem


Jay Vredenburg

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

October 19, 1979

John Logsdon
7 Leigh St.
Huntington, NY 11743

Dear Mr. Logsdon:

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:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Anthony Curto
Curto, Armstrong, Meservey & Waller
205 E. Main St.
Huntington, NY
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
JOHN LOGSDON	:	DECISION
for Redetermination of a Deficiency	:	
or for Refund of Personal Income Tax	:	
under Article 22 of the Tax Law for	:	
the Years 1973, 1974 and 1975.	:	

Petitioner, John Logsdon, 71 Little Plains Road, Huntington, New York 11743, 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 1973, 1974 and 1975 (File No. 15466).

A formal hearing was held before Michael Alexander, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on July 20, 1978 at 2:45 P.M. Petitioner appeared by Curto, Meservey, Armstrong & Waller, Esqs. (Anthony V. Curto, Esq., of counsel). The Income Tax Bureau appeared by Peter Crotty, Esq. (Bruce M. Zalaman, Esq., of counsel).

ISSUE

Whether petitioner was a responsible person who willfully failed to collect, truthfully account for and pay over personal income taxes withheld from employees and is, therefore, subject to a penalty equal to the total amount of the tax evaded, not collected, not accounted for, or not paid over under section 685(g) of the Tax Law.

FINDINGS OF FACT

1. Linden General, Inc. failed to pay over to New York State, all the income tax withheld from its employees for 1973, 1974 and 1975. John Logsdon was sent a Notice of Deficiency dated June 28, 1976, detailing the deficiency and his responsibility to pay a penalty under section 685(g) of the Tax Law. As revised by counsel for the Income Tax Bureau at the hearing, the notice provides for the following amounts in controversy for the stated periods:

<u>Withholding Tax Period</u>	<u>Amount</u>
November 16 - November 30, 1973	\$ 1,491.15
January 1 - February 15, 1974	<u>1,716.36</u>
Total	\$ 3,207.51

2. Petitioner, John Logsdon, a licensed nursing home administrator, was hired as the hospital administrator of Linden General Hospital on March 19, 1973; however, he did not assume his full responsibilities until approximately May 15, 1973, since the former administrator was still present and training him.

3. At a shareholder's meeting held on September 12, 1973, Mr. Scharfstein was elected president of Linden General, Inc. Mr. Scharfstein moved into the hospital and took over control and responsibility for the hospital's day-to-day operations.

4. In December of 1973, the corporation sought reorganization under Chapter XI of the Bankruptcy Act. Mr. Scharfstein was the debtor in possession with authority over the hospital's operations.

CONCLUSIONS OF LAW

A. That after September 12, 1973, petitioner was not a person, as described in section 685(g) of the Tax Law and as defined in

section 685(n) of the Tax Law, who was responsible to collect, account for and pay over taxes imposed under Article 22 of said Law.

B. That the petition of John Logsdon is granted and the Notice of Deficiency dated June 28, 1976 is cancelled.

DATED: Albany, New York

OCT 1 1976


STATE TAX COMMISSION


PRESIDENT

COMMISSIONER

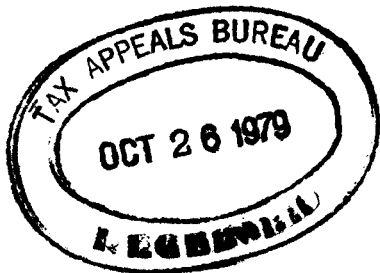
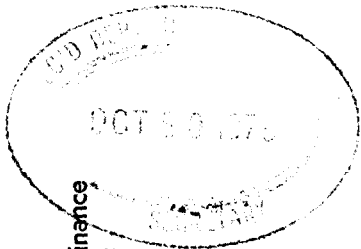

COMMISSIONER

Commissioner Koerner dissents.


Commissioner

TA-26 (4-76) 25M

STATE OF NEW YORK
Department of Taxation and Finance
TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N. Y. 12227



John Logsdon
7 Leigh St.
Huntington, NY 11743

Logsdon
11743

CERTIFIED

No. — 547127

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

October 19, 1979

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Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Anthony Curto
Curto, Armstrong, Meservey & Waller
205 E. Main St.
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Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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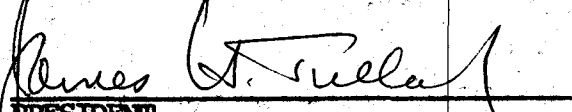
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DATED: Albany, New York

OCT 19 1979

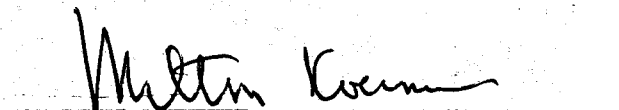
STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

Commissioner Koerner dissents


Commissioner