

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

October 9, 1979

Francis D. McDonough
RD #1, Peter Road
Brewster, NY 10509

Dear Mr. McDonough:

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

Sincerely,

STATE TAX COMMISSION

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Francis D. McDonough :

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 1967. :

State of New York

County of Albany

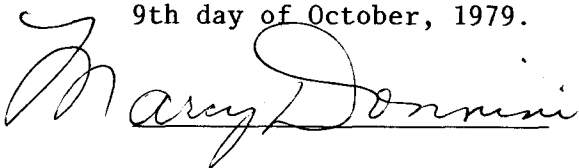
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 9th day of October, 1979, he served the within notice of Decision by certified mail upon Francis D. McDonough, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

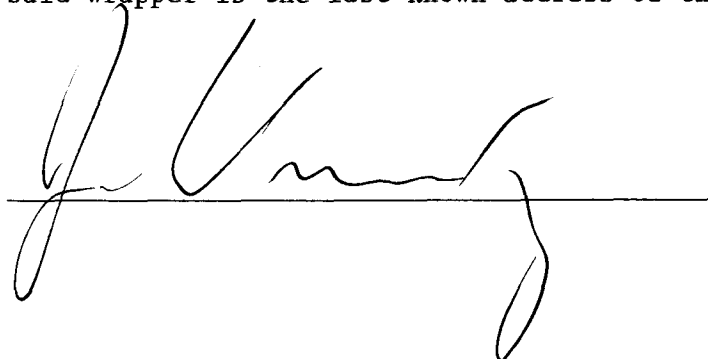
Francis D. McDonough
RD #1, Peter Road
Brewster, NY 10509

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
9th day of October, 1979.


Nancy Donnici


Jay Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Francis D. McDonough :
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 1967. :

AFFIDAVIT OF MAILING

State of New York
County of Albany

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Francis D. McDonough
RD #1, Peter Road
Brewster, NY 10509

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Sworn to before me this
9th day of October, 1979.

Mary Dominici

J. Vredenburg

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
 :
 of :
 FRANCIS D. McDONOUGH : DECISION
 :
 for Redetermination of a Deficiency or :
 for Refund of Personal Income Tax under :
 Article 22 of the Tax Law for the Year :
 1967. :

Petitioner, Francis D. McDonough, R.D. #1, Peter Road, Brewster, New York 10509, 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 1967 (File No. 13300).

A small claims hearing was held before William Valcarcel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on December 13, 1978 at 1:15 P.M. Petitioner appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq. (Samuel Freund, Esq., of counsel).

ISSUE

Whether petitioner was a responsible person required to collect, truthfully account for and pay over New York State withholding taxes of Millstream Motors, Inc. during 1967.

FINDINGS OF FACT

1. Millstream Motors, Inc. ("Millstream") failed to pay over to the New York State Income Tax Bureau, \$428.90 in income taxes withheld from its employees during 1967.

2. On November 25, 1974, the Income Tax Bureau issued a Notice of Deficiency against petitioner, Francis D. McDonough, imposing a penalty under

section 685(g) of the Tax Law. This was done on the grounds that petitioner was a person who was required to collect, truthfully account for and pay over personal income taxes withheld by Millstream Motors, Inc. from its employees.

3. Petitioner was a fifty percent shareholder and vice-president of Millstream, a corporation organized under the laws of New York State and conducting business in New York as an automobile dealer.

4. During the early part of 1967, the president of Millstream (who was also a fifty percent shareholder) became ill and left petitioner in charge of the operational and managerial functions of Millstream. Petitioner contended that the president kept and exercised his authority over the financial functions of the corporation, and that he frequently decided which bills were to be paid first.

5. Petitioner signed corporate checks and was aware of the corporation's financial problems. Due to the lack of available funds, petitioner had to pay all salaries on a net basis, without setting aside payroll taxes which were withheld. Petitioner was aware of the liability for New York State income taxes withheld from Millstream's employees and that said taxes were not paid.

6. Petitioner contended that the financial functions of the corporation were the sole responsibility of the president and that he, petitioner, had no voice in such matters.

CONCLUSIONS OF LAW

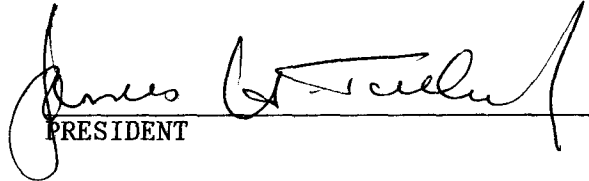
A. That petitioner, Francis D. McDonough, was a person required to collect, truthfully account for and pay over New York State personal income taxes withheld by Millstream Motors, Inc. of \$428.90, and that he willfully failed to do so, within the meaning of subsections (g) and (n) of section 685 of the Tax Law. Accordingly, petitioner is subject to a penalty equal to said sum under subsection (g) of section 685 of the Tax Law.

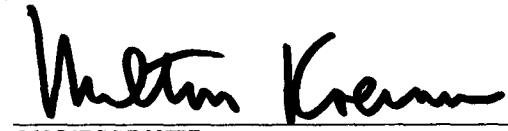
B. That the petition of Francis D. McDonough is denied and the Notice of Deficiency issued on November 25, 1974 is sustained.

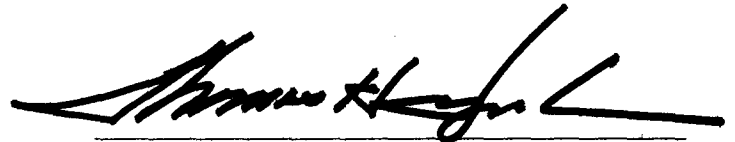
DATED: Albany, New York

STATE TAX COMMISSION

OCT 9 1979


PRESIDENT


COMMISSIONER


COMMISSIONER