

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Nicholas Napolitano :

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 1965. :

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 17th day of August, 1979, he served the within notice of Decision by certified mail upon Nicholas Napolitano, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Nicholas Napolitano

48-28 59th Pl.

Woodside, NY 11377

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
17th day of August, 1979.

Victoria Gary

Jay V. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of

Nicholas Napolitano :

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 1965. :

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 17th day of August, 1979, he served the within notice of Decision by certified mail upon Jerome J. Feldman 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. Jerome J. Feldman
Feldman, Feldman, & Co.
249-12 Jericho Turnpike
Bellerose, NY 11426

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
17th day of August, 1979.

Victoria Gray

Jay Vredenburg



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

August 17, 1979

Nicholas Napolitano
48-28 59th Pl.
Woodside, NY 11377

Dear Mr. Napolitano:

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
Jerome J. Feldman
Feldman, Feldman, & Co.
249-12 Jericho Turnpike
Bellerose, NY 11426
Taxing Bureau's Representative

STATE TAX COMMISSION

In the Matter of the Petition :
of :
NICHOLAS NAPOLITANO : DECISION
for Redetermination of a Deficiency or :
for Refund of Personal Income Tax under :
Article 22 of the Tax Law for the Year :
1965. :
:

A small claims hearing was held before Harry Huebsch, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 21, 1978 at 2:45 P.M. Petitioner appeared pro se and by Jerome J. Feldman, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (Abraham Schwartz, Esq., of counsel).

Whether petitioner was a person required to collect, account for and pay over New York State income tax withheld by Abbey Textile Refinishers, Ltd. during 1965.

FINDINGS OF FACT

1. Abbey Textile Refinishers, Ltd. (hereinafter "Abbey") failed to pay over to the Income Tax Bureau \$4,311.10 in New York State personal income tax withheld from its employees during 1965.

2. On September 29, 1969, the Income Tax Bureau issued a Statement of Deficiency against petitioner, Nicholas Napolitano, asserting penalty equal to the amount of New York State withholding taxes due from Abbey for 1965. This was done on the grounds that he was a person required to collect, truthfully account for and pay over said taxes, and that he willfully failed to do so. Accordingly, the Income Tax Bureau issued a Notice of Deficiency to petitioner. On February 9, 1970, it issued him a Notice and Demand for Payment of Income Tax Due. On September 8, 1976, a judgment was entered and the State of New York Legal Enforcement Unit made a levy on petitioner's bank account for \$1,928.31. On December 10, 1976, petitioner filed a Claim for Credit or Refund of Personal Income Tax (Form IT-113X), to recover the amount which had been seized. On January 14, 1977, the Income Tax Bureau mailed a Notice of Disallowance to petitioner, denying said claim.

3. Petitioner was an officer of Abbey Textile Refinishers, Ltd. and had the authority to sign checks. His duties were similar to those of an office manager. He signed tax returns and had knowledge that personal income taxes withheld from employees of the corporation had not been paid over to the Income Tax Bureau.

4. Petitioner contended that he was an officer of Abbey in name only. He made no business decisions, was told which creditors were to be paid and had no financial interest in the corporation. He further contended that the Internal Revenue Service had questioned him on this matter and that he was not held liable for any taxes. Petitioner did not submit documentary or any satisfactory evidence to support his contentions.

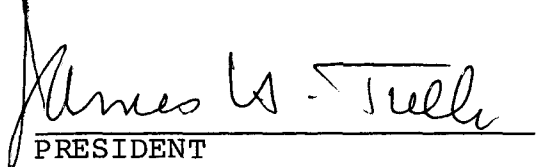
CONCLUSIONS OF LAW

A. That petitioner, Nicholas Napolitano, was a person required to collect, truthfully account for and pay over New York State income tax withheld by Abbey Textile Refinishers, Ltd. in the sum of \$4,311.10 for 1965, and that he willfully failed to do so, within the meaning of subdivisions (g) and (n) of section 685 of the Tax Law. Accordingly, petitioner is subject to a penalty equal to said sum under section 685(g) of the Tax Law.

B. That the petition and the claim for refund of Nicholas Napolitano are denied.

DATED: Albany, New York
AUG 17 1979

STATE TAX COMMISSION

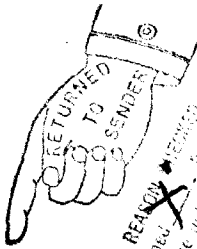

PRESIDENT


COMMISSIONER


COMMISSIONER

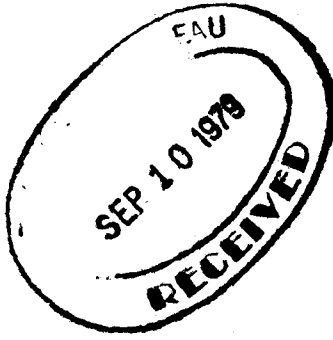
TA-26 (4-76) 25M

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



REASON RETURNED TO SENDER
☒ Unclaimed
☐ Addressee unknown
☐ Insufficient Address
☐ No such street
☐ No such office in state
☐ Do not re-mail in this envelope

Nicholas Napolitano
48-28 59th Pl.
Woodside, NY 11377



RECEIVED

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

JOHN J. SOLLECITO
DIRECTOR

Telephone: (518) 457-1723

August 17, 1979

Nicholas Napolitano
48-28 59th Pl.
Woodside, NY 11377

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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,



cc: Petitioner's Representative
Jerome J. Feldman
Feldman, Feldman, & Co.
249-12 Jericho Turnpike
Bellerose, NY 11426
Taxing Bureau's Representative

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
of
NICHOLAS NAPOLITANO

for Redetermination of a Deficiency or
for Refund of Personal Income Tax under
Article 22 of the Tax Law for the year
1965.

DECISION

Petitioner, Nicholas Napolitano, 48-28 59th Place, Woodside,
New York 11377, filed a petition for redetermination of a defi-
ciency or for refund of personal income tax under Article 22 of
the Tax Law for the year 1965 (File No. 17710).

A small claims hearing was held before Harry Huebsch, Hearing
Officer, at the offices of the State Tax Commission, Two World
Trade Center, New York, New York, on June 21, 1978 at 2:45 P.M. The
Petitioner appeared pro se and by Jerome J. Feldman, CPA. (Abraham Schwartz,
Income Tax Bureau appeared by Peter Crotty, Esq., of counsel).

ISSUE

Whether petitioner was a person required to collect, account
for and pay over New York State income tax withheld by Abbey Textile
Finishers, Ltd. during 1965.

FINDINGS OF FACT

1. Abbey Textile Refinishers, Ltd. (hereinafter "Abbey") failed to pay over to the Income Tax Bureau \$4,311.10 in New York State personal income tax withheld from its employees during 1965.

2. On September 29, 1969, the Income Tax Bureau issued a Statement of Deficiency against petitioner, Nicholas Napolitano, asserting penalty equal to the amount of New York State withholding taxes due from Abbey for 1965. This was done on the grounds that he was a person required to collect, truthfully account for and pay over said taxes, and that he willfully failed to do so. Accordingly, the Income Tax Bureau issued a Notice of Deficiency to petitioner. On February 9, 1970, it issued him a Notice and Demand for Payment of Income Tax Due. On September 8, 1976, a judgment was entered and the State of New York Legal Enforcement Unit made a levy on petitioner's bank account for \$1,928.31. On December 10, 1976, petitioner filed a Claim for Credit or Refund of Personal Income Tax (Form IT-113X), to recover the amount which had been seized. On January 14, 1977, the Income Tax Bureau mailed a Notice of Disallowance to petitioner, denying said claim.

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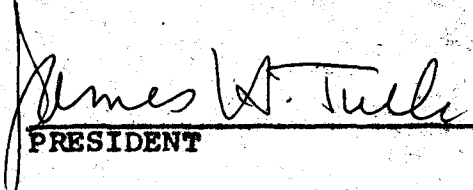
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A. That petitioner, Nicholas Napolitano, was a person required to collect, truthfully account for and pay over New York State income tax withheld by Abbey Textile Refinishers, Ltd. in the sum of \$4,311.10 for 1965, and that he willfully failed to do so, within the meaning of subdivisions (g) and (n) of section 685 of the Tax Law. Accordingly, petitioner is subject to a penalty equal to said sum under section 685(g) of the Tax Law.

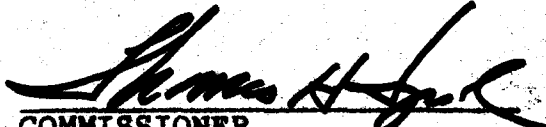
B. That the petition and the claim for refund of Nicholas Napolitano are denied.

DATED: Albany, New York
AUG 17 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER