

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Emanuel A. Pillar :

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 1970 - 1972. :

State of New York

County of Albany

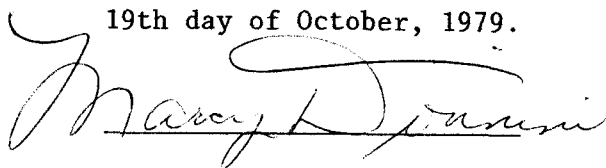
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 19th day of October, 1979, he served the within notice of Decision by certified mail upon Peter W. Mitchell the representative of the petitioner in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

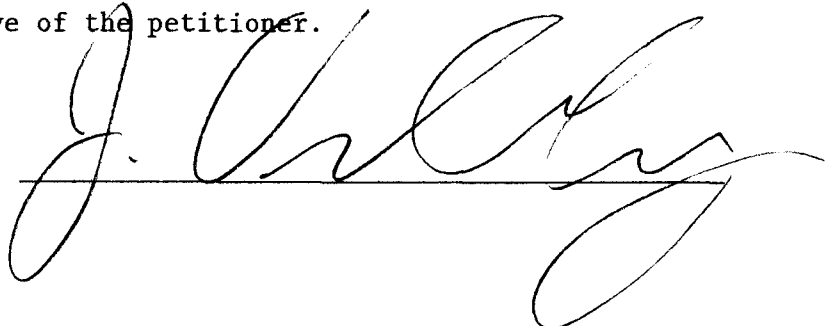
Mr. Peter W. Mitchell
5 Mill St.
Cazenovia, NY 13035

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.


Mary L. D'Amico


Jay Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Emanuel A. Pillar :

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 1970 - 1972. :

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 Emanuel A. Pillar, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Emanuel A. Pillar

9 Fairway Dr.

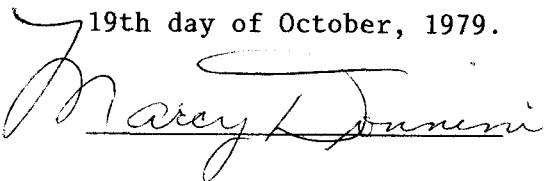
White Plains, NY 10605

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. Daneri



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

October 19, 1979

Emanuel A. Pillar
9 Fairway Dr.
White Plains, NY 10605

Dear Mr. Pillar:

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
Peter W. Mitchell
5 Mill St.
Cazenovia, NY 13035
Taxing Bureau's Representative

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
EMANUEL A. PILLAR	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Years	:	
1970, 1971 and 1972.	:	

Petitioner, Emanuel A. Pillar, 9 Fairway Drive, White Plains, New York 10605, 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 1970, 1971 and 1972 (File No. 14203).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, State Office Building, 333 East Washington Street, Syracuse, New York, on July 21, 1977 at 10:45 A.M. Petitioner appeared by Peter Mitchell, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Alexander Weiss, Esq., of counsel).

ISSUE

Whether petitioner is liable for unpaid withholding taxes due from Alexander Sales Corporation for 1970, 1971 and 1972.

FINDINGS OF FACT

1. On April 12, 1974, the Income Tax Bureau issued a Statement of Deficiency against petitioner, Emanuel A. Pillar, imposing a penalty equal to the total amount of unpaid withholding taxes due from Alexander Sales Corporation for the period April 1, 1970 to December 31, 1970 in the amount of \$8,424.94. There was also an unpaid balance for 1971 of \$1,284.63, and for the period

January 1, 1972 to June 15, 1972 of \$3,067.84, for a total of \$12,777.41. The Statement was issued on the grounds that petitioner was a person required to collect and pay over said taxes, and that he willfully failed to do so. Accordingly, on April 12, 1974, the Income Tax Bureau issued a Notice of Deficiency to petitioner for \$12,777.41.

2. On February 4, 1971, Alexander Sales Corporation filed a petition in bankruptcy under Chapter XI, and was adjudicated bankrupt at the end of June 1972. All the assets of the corporation, including the file cabinets with its records, were then sold through the bankruptcy court. Petitioner was unable to retrieve or replace the records.

3. Petitioner conceded that he was president and majority stockholder of Alexander Sales Corporation and that he controlled the corporation throughout 1970 and up to February 4, 1971. However, he contended that his accountants paid all withholding taxes until the time when the trustee in bankruptcy became responsible for the taxes.

CONCLUSIONS OF LAW

A. That petitioner, Emanuel A. Pillar, has failed to sustain the burden of proof imposed by section 689(e) of the Tax Law, which requires him to establish that the unpaid withholding tax due from Alexander Sales Corporation in the amount of \$12,777.41 as determined by the Income Tax Bureau is incorrect.

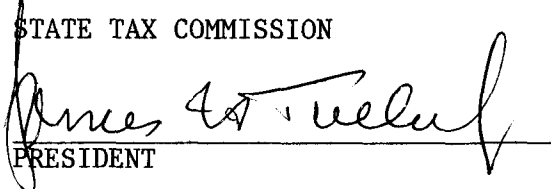
B. That petitioner was a person required to collect, account for and pay over to New York State \$8,424.94 in withholding taxes due from Alexander Sales Corporation for the period April 1, 1970 to December 31, 1970, for 1971, and for the period January 1, 1972 to June 15, 1972, within the meaning and intent of section 685(n) of the Tax Law; that petitioner willfully failed or caused Alexander Sales corporation to willfully fail to collect, account for and pay over said taxes for said period; therefore, a penalty equal to the amount of the unpaid withholding taxes was properly imposed against him under section 685(g) of the Tax Law.


C. That the petition of Emanuel A. Pillar is denied and the Notice of Deficiency issued on April 12, 1974 is sustained.

DATED: Albany, New York

OCT 19 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER