

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Michael E. Ryan :
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 1970-1971. :

AFFIDAVIT OF MAILING

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 26th day of November, 1979, he served the within notice of Decision by certified mail upon Michael E. Ryan, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Michael E. Ryan
20 Summer St.
Forest Hills, NY 11375

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
26th day of November, 1979.

Joanne Knapp

J. Vredenburg

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

November 26, 1979

Michael E. Ryan
20 Summer St.
Forest Hills, NY 11375

Dear Mr. Ryan:

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

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
MICHAEL E. RYAN : DECISION
for Redetermination of a Deficiency or for :
Refund of Personal Income Tax under Article 22 :
of the Tax Law for the Years 1970 and 1971. :

Petitioner, Michael E. Ryan, 20 Summer Street, Forest Hills, New York 11375, 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 and 1971 (File No. 14089).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on March 5, 1979 at 1:15 P.M. Petitioner appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq. (Aliza Schwadron, Esq., of counsel).

ISSUE

Whether petitioner was liable for a penalty equal to the amount of unpaid New York State withholding taxes due from Mr. T. Barber Shops, Inc. for 1970 and 1971.

FINDINGS OF FACT

1. Mr. T. Barber Shops, Inc. failed to pay over to the Income Tax Bureau \$1,714.21 of the New York State personal income taxes withheld from wages and salaries paid to its employees during 1970 and 1971.

2. On January 26, 1976, the Income Tax Bureau issued a Statement of Deficiency against petitioner, Michael E. Ryan, imposing a penalty equal to

the amount of New York State withholding taxes due from Mr. T. Barber Shops, Inc. for 1970 and 1971. This was done on the grounds that he was required to collect, truthfully account for and pay over said taxes and that he willfully failed to do so. The Income Tax Bureau issued a Notice of Deficiency against him for \$1,714.21.

3. Petitioner, an attorney, was employed by the corporation in his professional capacity to render occasional legal services.

4. Mr. Joseph R. Todaro, president and sole stockholder of the corporation, testified that the petitioner was neither an officer nor a stockholder of the corporation. The petitioner had no authority to sign corporate checks nor to direct and/or manage its affairs.

5. The Income Tax Bureau presented no evidence in contradiction of Mr. Todaro's testimony.

CONCLUSIONS OF LAW

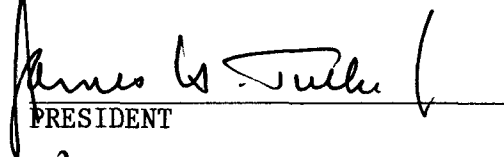
A. That petitioner, Michael E. Ryan, is not a person who willfully failed to collect, truthfully account for and pay over withholding taxes due from Mr. T. Barber Shops, Inc. in accordance with the meaning and intent of sections 685(n) and 685 (g) of the Tax Law.

B. That the petition of Michael E. Ryan is granted and the Notice of Deficiency issued January 26, 1976 is cancelled.

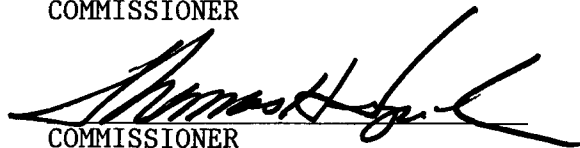
DATED: Albany, New York

NOV 26 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER