

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of

Joseph R. Todaro :

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 - 1971. :

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 Joseph R. Todaro, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Joseph R. Todaro
42-25 Hampton St.
Elmhurst, 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

Joseph R. Todaro
42-25 Hampton St.
Elmhurst, NY 11375

Dear Mr. Todaro:

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	:	
JOSEPH R. TODARO	:	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, Joseph R. Todaro, 42-25 Hampton Street, Elmhurst, 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. 14521).

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. (Irwin Levy, Esq., of counsel).

ISSUE

Whether petitioner, Joseph R. Todaro, is 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 New York State personal income taxes withheld from its employees during 1970 and 1971.

2. On January 26, 1976, the Income Tax Bureau issued a Statement of Deficiency against petitioner, Joseph R. Todaro, imposing a penalty equal to the amount of New York State withholding taxes due from Mr. T. Barber Shops,

Inc. for 1970 and 1971. The deficiency was issued on the grounds that petitioner was required to collect, truthfully account for and pay over said taxes and that he willfully failed to do so. In accordance with the aforesaid Statement of Deficiency, the Income Tax Bureau issued a Notice of Deficiency for \$1,714.21.

3. Petitioner, Joseph R. Todaro, was president and sole stockholder of Mr. T. Barber Shops, Inc. during 1970 and 1971. In his capacity as president he signed checks, prepared the payroll and signed tax returns.

4. Petitioner, Joseph R. Todaro, was aware of the withholding tax liability and believed he was paying it off at \$17.90 a week. At the hearing it was determined that these payments were on a withholding tax liability of another business.

CONCLUSIONS OF LAW

A. That petitioner, Joseph R. Todaro, as president of Mr. T. Barber Shops, Inc. was a person required to collect, truthfully account for and pay over New York State withholding taxes due from said corporation during 1970 and 1971.

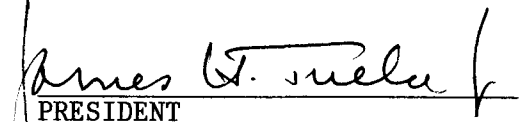
B. That petitioner, Joseph R. Todaro, willfully failed or caused Mr. T. Barber Shops, Inc. to willfully fail to collect, truthfully account for and pay over New York State withholding taxes due from said corporation for 1970 and 1971. The penalty equal to the total of the unpaid withholding taxes was properly assessed against him in accordance with the meaning and intent of section 685(g) of the Tax Law.

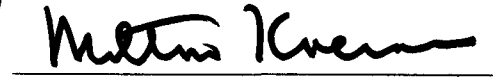
C. That the petition of Joseph R. Todaro is denied and the Notice of Deficiency issued January 26, 1976 is sustained.


DATED: Albany, New York

NOV 26 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER