

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Robert B. Bacon :

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 1972 & 1973. :

State of New York

County of Albany

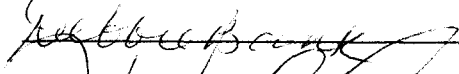

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 19th day of September, 1980, he served the within notice of Decision by certified mail upon Robert B. Bacon, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Robert B. Bacon
335 Orwood Pl.
Syracuse, NY 13208

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 September, 1980.

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Robert B. Bacon :

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 1972 & 1973. :

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 September, 1980, he served the within notice of Decision by certified mail upon William P. Christy the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

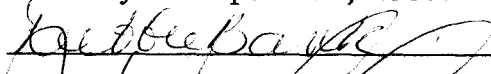

Mr. William P. Christy
731 James St.
Syracuse, NY 13203

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 September, 1980.

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

September 19, 1980

Robert B. Bacon
335 Orwood Pl.
Syracuse, NY 13208

Dear Mr. Bacon:

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
William P. Christy
731 James St.
Syracuse, NY 13203
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
ROBERT B. BACON	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Years 1972 and 1973.	:	

Petitioner, Robert B. Bacon, 335 Orwood Place, Syracuse, New York 13208, 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 1972 and 1973 (File No. 10731).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, One Marine Midland Plaza, Rochester, New York, on November 19, 1976 at 10:30 A.M., and on July 27, 1979 at 9:15 A.M. Petitioner appeared by William P. Christy, Sr., Esq. The Audit Division appeared by Peter Crotty, Esq. (Richard Kaufman and Barry Bresler, Esqs., of counsel).

ISSUE

Whether petitioner was a person required to collect, truthfully account for and pay over the withholding taxes due from Syracuse Foundry, Inc. for 1972 and 1973.

FINDINGS OF FACT

1. On April 12, 1974, the Audit Division issued a Statement of Deficiency against petitioner, Robert B. Bacon, imposing a penalty equal to the amount of New York State withholding taxes due from Syracuse Foundry, Inc. for the periods October 16, 1972 to November 30, 1972 and January 1, 1973 to March 9, 1973. 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; therefore, on April 12, 1974, a Notice of Deficiency was issued to him for \$16,361.11.

2. Syracuse Foundry, Inc., failed to pay over to New York State \$16,361.11 in income taxes withheld from Syracuse's employees' wages for the periods in issue.

3. Robert B. Bacon was a molding superintendent at Syracuse Foundry, Inc. from 1945 to 1971 when new owners took over the company. He continued with the company in customer relations work, and became a vice president of the company with authority to sign checks as a matter of company convenience. He had no authority as to which creditors were to be paid. His responsibility was with the company's customers. The checks he signed when the president was unavailable were payroll checks made up at the bank and presented for signature. He became aware of the company's financial plight early in 1973.

CONCLUSIONS OF LAW

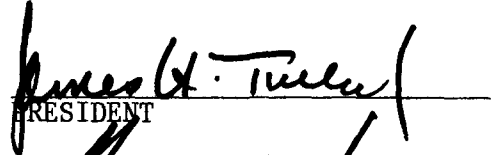
A. That petitioner, Robert B. Bacon, was not a person required to collect, truthfully account for and pay over the withholding taxes due from Syracuse Foundry, Inc. within the meaning of subsections (g) and (n) of section 685 of the Tax Law. Accordingly, petitioner is not liable to a penalty pursuant to section 685(g) of the Tax Law equal to the total amount of tax due from said corporation.

B. The petition of Robert B. Bacon is granted and the Notice of Deficiency issued against him on April 12, 1974 is cancelled.

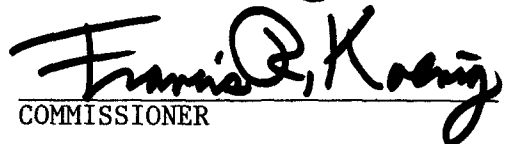
DATED: Albany, New York

SEP 19 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER