

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition  
of

Robert H. Binkerd

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 1971 & 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 20th day of June, 1980, he served the within notice of Decision by certified mail upon Robert H. Binkerd, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Robert H. Binkerd  
4819 Bear Rd.  
Liverpool, NY 13088

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  
20th day of June, 1980.

Joanne Knapp

J. J. Vredenburg

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition  
of

Robert H. Binkerd

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 1971 & 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 20th day of June, 1980, he served the within notice of Decision by certified mail upon Robert Openheimer 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. Robert Openheimer  
1100 Crossroads Office Bldg.  
Rochester, NY 14614

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  
20th day of June, 1980.

Joanne Krapp

J. J. Vredenburg

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

June 20, 1980

Robert H. Binkerd  
4819 Bear Rd.  
Liverpool, NY 13088

Dear Mr. Binkerd:

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  
Robert Openheimer  
1100 Crossroads Office Bldg.  
Rochester, NY 14614  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petitions	:	
of	:	
ROBERT H. BINKERD	:	DECISION
for Redetermination of Deficiencies or for	:	
Refund of Personal Income Tax under Article	:	
22 of the Tax Law for the Years 1971 and 1972.	:	

---

Petitioner, Robert H. Binkerd, 4819 Bear Road, Liverpool, New York 13088, filed petitions for redetermination of deficiencies or for refund of personal income tax under Article 22 of the Tax Law for the years 1971 and 1972 (File Nos. 10734 and 15529).

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 February 16, 1978 at 1:15 P.M. Petitioner appeared by Robert Oppenheimer, Esq. The Audit Division appeared by Peter Crotty, Esq. (Alexander Weiss, Esq., of counsel).

ISSUE

Whether petitioner was a person required to collect, truthfully account for and pay over the withholding taxes due from Megadyne Industries, Inc. for 1971 and 1972.

FINDINGS OF FACT

1. On September 30, 1974 and August 25, 1975, the Income Tax Bureau issued statements of deficiency against petitioner, Robert H. Binkerd. These statements imposed penalties equal to the amount of New York State withholding taxes due from Megadyne Industries, Inc. ("Megadyne") for the periods January 1, 1971 to December 31, 1971 and June 1, 1972 to December 31, 1972. 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. On September 30, 1974 and August 25, 1975, notices of deficiency were issued to him in the amounts of \$5,596.46 and \$6,232.60, respectively.

2. Megadyne failed to pay over to the New York State Income Tax Bureau personal income taxes withheld from its employees' wages for the period January 1, 1971 through December 31, 1971 and the period June 1, 1972 through December 31, 1972; this amounted to \$11,829.06 (\$5,596.46 for 1971 and \$6,232.60 for 1972).

3. Petitioner, Robert H. Binkerd, was a vice-president of Megadyne from July 23, 1971 to December 31, 1971. He was the president of Angstrom Technology, Inc. upon its organization and until July of 1971, when it was acquired by Megadyne. He had authority to fire personnel and also to sign some checks. He took part in discussions with the Internal Revenue Service regarding Federal withholding taxes; from these discussions a schedule of payments was arranged regarding back taxes. Petitioner had occasion to see the balance sheet and the profit-and-loss statement of Megadyne, and he discussed outstanding liabilities with other officers regarding the Federal taxes. Early in 1972, he became involved in discussions with two banking organizations, Central Trust of Rochester and the New York State Development Group, regarding a loan. Part of this loan was used to pay past Federal tax indebtedness. The reason Megadyne acquired Angstrom was that the latter had an unused small business administration loan of \$150,000.00.

#### CONCLUSIONS OF LAW

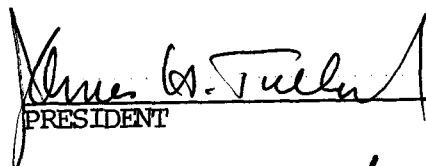
A. That petitioner, Robert H. Binkerd, was a person required to collect, truthfully account for and pay over the withholding taxes due from Megadyne Industries, Inc., within the meaning of subsections (g) and (n) of section 685 of the Tax Law, and that he willfully failed to do so. Therefore, petitioner is 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. That the petitions of Robert H. Binkerd are denied and the notices of deficiency issued on September 30, 1974 and August 25, 1975 are sustained.

DATED: Albany, New York

STATE TAX COMMISSION

JUN 20 1980

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER

REQUEST FOR BETTER ADDRESS

12

Dec. For. 22 9-19

Requested by <i>J. W. Heddenburg</i>	Unit Appeals Bureau 1007 - Bldg. 9 Emp. Campus Albany, New York 12247	Date of Request 10-2-80
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Please find most recent address of taxpayer described below; return to person named above.

Social Security Number 066-16-1183	Date of Petition 15-11-18
Name Robert H. Binford	
Address 20 Fairwood Drive Rochester, N.Y. 14623	

## Results of search by Files

<input checked="" type="checkbox"/> New address:	1978 add. 4819-Bear Rd. #8A Liverpool N.Y.
<input type="checkbox"/> Same as above, no better address	
<input checked="" type="checkbox"/> Other:	0711

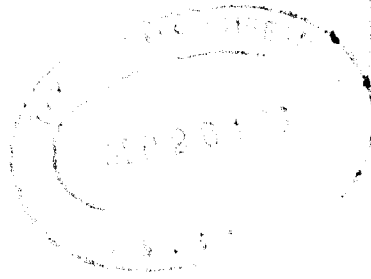
Searched by SL 1113	Section ME	Date of Search 10-2-80
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PERMANENT RECORDFOR INSERTION IN TAXPAYER'S FOLDER

TA-26 (4-76) 25M

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

Robert H. Binkerd  
20 Fairwood Dr.  
Rochester, NY 14623



9-22 ✓  
9-27  
10-7

mailed 11/7/80

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :

of

Robert H. Binkerd :

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 Period 1/1/73-3/9/73. :

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 7th day of November, 1980, he served the within notice of Decision by certified mail upon Robert H. Binkerd, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Robert H. Binkerd  
4819 Bear Rd. #8A  
Liverpool, NY

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  
7th day of November, 1980.

Deborah A Bank



STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :

of

Robert H. Binkerd :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of  
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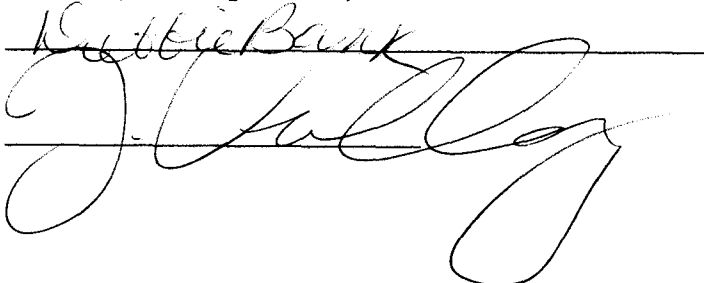
Robert H. Binkerd  
20 Fairwood Dr.  
Rochester, NY 14623

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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.

  
J. Vredenburg

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of

Robert H. Binkerd :

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 Period 1/1/73-3/9/73. :

State of New York  
County of Albany

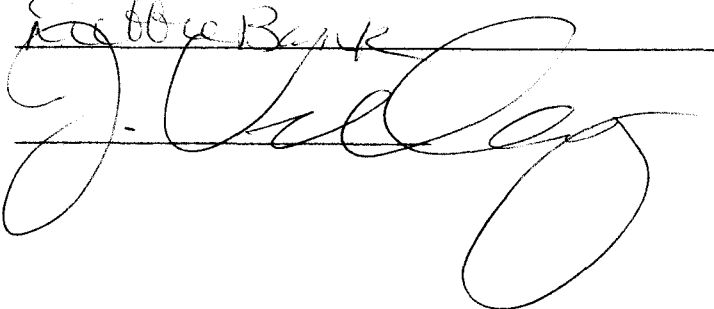
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 19th day of September, 1980, he served the within notice of Decision by certified mail upon Robert Oppenheimer the representative of the petitioner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

Mr. Robert Oppenheimer  
1100 Crossroads Office Bldg.  
Rochester, NY 14614

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.

  
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STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
ROBERT H. BINKERD	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Period January 1, 1973	:	
to March 9, 1973.	:	

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Petitioner, Robert H. Binkerd, 20 Fairwood Drive, Rochester, New York 14623, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the period January 1, 1973 to March 9, 1973 (File No. 10729).

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 Robert Oppenheimer, 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 the period January 1, 1973 to March 9, 1973.

FINDINGS OF FACT

1. On May 19, 1975, the Audit Division issued a Statement of Deficiency against petitioner, Robert H. Binkerd, imposing a penalty equal to the amount of New York State withholding taxes due from Syracuse Foundry, Inc. for the period 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

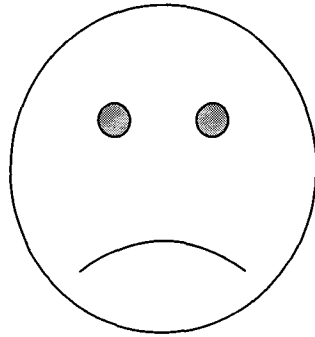
taxes, and that he willfully failed to do so; therefore, on May 19, 1975 a Notice of Deficiency was issued to him for \$12,184.61.

2. Syracuse Foundry, Inc. failed to pay over to New York State \$12,184.61 in personal income taxes withheld from Syracuse's employees' wages for the period January 1, 1973 to March 9, 1973.

3. In December 1972, Robert H. Binkerd was retained as a consultant by the directors and stockholders of Clutch Guard Corporation to look into the status of Syracuse Foundry, Inc. He was to find out what the problems were and to make recommendations to them. Upon his report to the stockholders he was made vice-president in charge of finances of Syracuse Foundry, Inc. on December 7, 1972. The plant foremen would advise him of the requirements for production. Other schedules provided him with information on what was needed to cover expenses; another schedule contained the cash flow so that he knew what funds he had available in order to keep the company going. Mr. Binkerd's name appeared on the bank authorization card as comptroller for acceptance (of his signature) on instruments for the payment of monies or withdrawal of funds; he had the final say on who was to be paid.

4. The computer printout for the Syracuse Foundry, Inc. payroll that was prepared by one of the local banks indicated that for the period January 1, 1973 to June 17, 1973, the total state withholding tax for 1973 was \$10,701.35 for union employees and \$3,553.95 for non-union employees. The combined total for the year to June 17, 1973 was \$14,255.30. Semi-monthly employers returns indicating personal income tax withheld for the period August 16, 1972 to August 31, 1972 showed that \$1,735.00 was remitted by Syracuse; for the period September 16, 1972 to September 30, 1972, \$1,226.90 was withheld and remitted; for the period October 1, 1972 to October 15, 1972, \$1,275.80 was withheld and

# **CORRECTION FOLLOWS**



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

June 20, 1980

Robert H. Binkerd  
4819 Bear Rd.  
Liverpool, NY 13088

Dear Mr. Binkerd:

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  
Robert Openheimer  
1100 Crossroads Office Bldg.  
Rochester, NY 14614  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petitions	:	
of	:	
ROBERT H. BINKERD	:	DECISION
for Redetermination of Deficiencies or for	:	
Refund of Personal Income Tax under Article	:	
22 of the Tax Law for the Years 1971 and 1972.	:	

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Petitioner, Robert H. Binkerd, 4819 Bear Road, Liverpool, New York 13088, filed petitions for redetermination of deficiencies or for refund of personal income tax under Article 22 of the Tax Law for the years 1971 and 1972 (File Nos. 10734 and 15529).

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 February 16, 1978 at 1:15 P.M. Petitioner appeared by Robert Oppenheimer, Esq. The Audit Division appeared by Peter Crotty, Esq. (Alexander Weiss, Esq., of counsel).

ISSUE

Whether petitioner was a person required to collect, truthfully account for and pay over the withholding taxes due from Megadyne Industries, Inc. for 1971 and 1972.

FINDINGS OF FACT

1. On September 30, 1974 and August 25, 1975, the Income Tax Bureau issued statements of deficiency against petitioner, Robert H. Binkerd. These statements imposed penalties equal to the amount of New York State withholding taxes due from Megadyne Industries, Inc. ("Megadyne") for the periods January 1, 1971 to December 31, 1971 and June 1, 1972 to December 31, 1972. 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. On September 30, 1974 and August 25, 1975, notices of deficiency were issued to him in the amounts of \$5,596.46 and \$6,232.60, respectively.

2. Megadyne failed to pay over to the New York State Income Tax Bureau personal income taxes withheld from its employees' wages for the period January 1, 1971 through December 31, 1971 and the period June 1, 1972 through December 31, 1972; this amounted to \$11,829.06 (\$5,596.46 for 1971 and \$6,232.60 for 1972).

3. Petitioner, Robert H. Binkerd, was a vice-president of Megadyne from July 23, 1971 to December 31, 1971. He was the president of Angstrom Technology, Inc. upon its organization and until July of 1971, when it was acquired by Megadyne. He had authority to fire personnel and also to sign some checks. He took part in discussions with the Internal Revenue Service regarding Federal withholding taxes; from these discussions a schedule of payments was arranged regarding back taxes. Petitioner had occasion to see the balance sheet and the profit-and-loss statement of Megadyne, and he discussed outstanding liabilities with other officers regarding the Federal taxes. Early in 1972, he became involved in discussions with two banking organizations, Central Trust of Rochester and the New York State Development Group, regarding a loan. Part of this loan was used to pay past Federal tax indebtedness. The reason Megadyne acquired Angstrom was that the latter had an unused small business administration loan of \$150,000.00.

#### CONCLUSIONS OF LAW

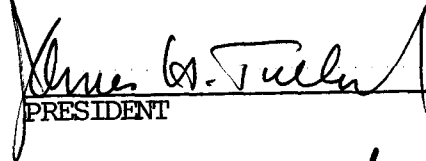
A. That petitioner, Robert H. Binkerd, was a person required to collect, truthfully account for and pay over the withholding taxes due from Megadyne Industries, Inc., within the meaning of subsections (g) and (n) of section 685 of the Tax Law, and that he willfully failed to do so. Therefore, petitioner is liable to a penalty pursuant to section 685(g) of the Tax Law, equal to the total amount of tax due from said corporation.

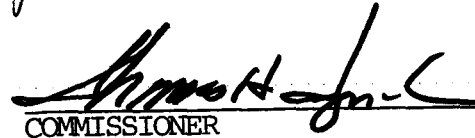
B. That the petitions of Robert H. Binkerd are denied and the notices of deficiency issued on September 30, 1974 and August 25, 1975 are sustained.

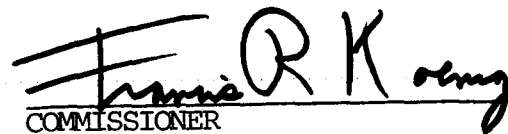
DATED: Albany, New York

STATE TAX COMMISSION

JUN 20 1980

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER

12

REQUEST FOR BETTER ADDRESS

Dec. For. 27 9-19

Requested by <i>J. Wiedenberg</i>	Unit <i>10-1-10</i>	Date of Request <i>10-2-80</i>
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Please find most recent address of taxpayer described below; return to person named above.

Social Security Number <i>066-16-1183</i>	Date of Petition <i>15-11-18</i>
Name <i>Robert H. Binkard</i>	
Address <i>20 Fairwood Drive Rochester, N.Y. 14623</i>	

## Results of search by Files

<input checked="" type="checkbox"/> New address:	<i>1978 add. 4819 Bear Rd. S.F.A. Liverpool N.Y.</i>
<input type="checkbox"/> Same as above, no better address	
<input checked="" type="checkbox"/> Other:	<i>1978</i>

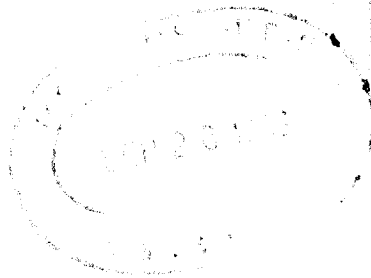
Searched by <i>21</i> <i>10-13</i>	Section <i>10-1</i>	Date of Search <i>10-2-80</i>
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PERMANENT RECORDFOR INSERTION IN TAXPAYER'S FOLDER

TA-26 (4-76) 25M

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

Robert H. Binkerd  
20 Fairwood Dr.  
Rochester, NY 14623



9-22-  
9-27  
10-7

remitted 11/7/80

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :

of

Robert H. Binkerd :

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 Period 1/1/73-3/9/73. :

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 7th day of November, 1980, he served the within notice of Decision by certified mail upon Robert H. Binkerd, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

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Sworn to before me this  
7th day of November, 1980.

Deborah A Bank



STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :

of

Robert H. Binkerd :

AFFIDAVIT OF MAILING

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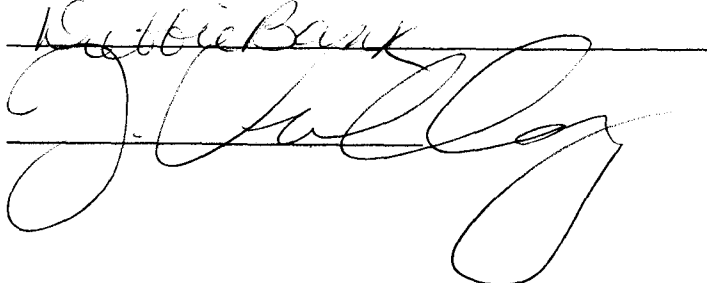
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Robert H. Binkerd

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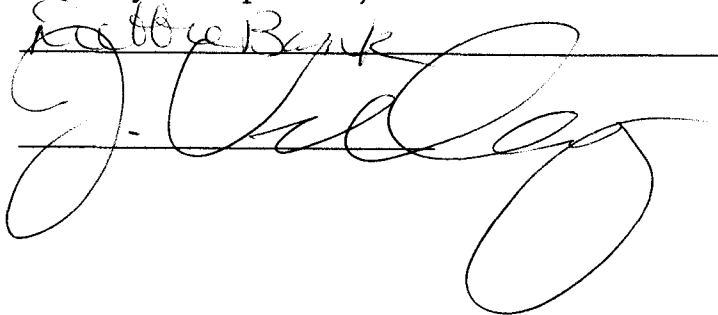
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Rochester, NY 14614

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19th day of September, 1980.

  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

September 19, 1980

Robert H. Binkerd  
20 Fairwood Dr.  
Rochester, NY 14623

Dear Mr. Binkerd:

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.

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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  
Robert Oppenheimer  
1100 Crossroads Office Bldg.  
Rochester, NY 14614  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
ROBERT H. BINKERD	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Period January 1, 1973	:	
to March 9, 1973.	:	

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Petitioner, Robert H. Binkerd, 20 Fairwood Drive, Rochester, New York 14623, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the period January 1, 1973 to March 9, 1973 (File No. 10729).

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 Robert Oppenheimer, 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 the period January 1, 1973 to March 9, 1973.

FINDINGS OF FACT

1. On May 19, 1975, the Audit Division issued a Statement of Deficiency against petitioner, Robert H. Binkerd, imposing a penalty equal to the amount of New York State withholding taxes due from Syracuse Foundry, Inc. for the period 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 May 19, 1975 a Notice of Deficiency was issued to him for \$12,184.61.

2. Syracuse Foundry, Inc. failed to pay over to New York State \$12,184.61 in personal income taxes withheld from Syracuse's employees' wages for the period January 1, 1973 to March 9, 1973.

3. In December 1972, Robert H. Binkerd was retained as a consultant by the directors and stockholders of Clutch Guard Corporation to look into the status of Syracuse Foundry, Inc. He was to find out what the problems were and to make recommendations to them. Upon his report to the stockholders he was made vice-president in charge of finances of Syracuse Foundry, Inc. on December 7, 1972. The plant foremen would advise him of the requirements for production. Other schedules provided him with information on what was needed to cover expenses; another schedule contained the cash flow so that he knew what funds he had available in order to keep the company going. Mr. Binkerd's name appeared on the bank authorization card as comptroller for acceptance (of his signature) on instruments for the payment of monies or withdrawal of funds; he had the final say on who was to be paid.

4. The computer printout for the Syracuse Foundry, Inc. payroll that was prepared by one of the local banks indicated that for the period January 1, 1973 to June 17, 1973, the total state withholding tax for 1973 was \$10,701.35 for union employees and \$3,553.95 for non-union employees. The combined total for the year to June 17, 1973 was \$14,255.30. Semi-monthly employers returns indicating personal income tax withheld for the period August 16, 1972 to August 31, 1972 showed that \$1,735.00 was remitted by Syracuse; for the period September 16, 1972 to September 30, 1972, \$1,226.90 was withheld and remitted; for the period October 1, 1972 to October 15, 1972, \$1,275.80 was withheld and

remitted. For all of 1972, form IT-2103 signed on January 31, 1973 by Donald A. Tesch as president indicates that \$27,769.90 was withheld and remitted by Syracuse. The average weekly tax withheld for 1972 was \$532.00; the average weekly tax withheld for the twenty-three weeks in 1973 was \$620.00.

5. Records of the Audit Division indicated that for the periods October 16, 1972 to November 30, 1972 and January 1, 1973 to March 9, 1973, unpaid withholding taxes were due, which amounts were estimated. Based on the weekly average for 1972, the withholding tax due for the seven week period was \$3,724.00; for the ten week period in 1973, \$6,200.00 was due.

CONCLUSIONS OF LAW

A. That petitioner, Robert H. Binkerd, was a person required to collect, truthfully account for and pay over the withholding taxes due from Syracuse Foundry, Inc.; that he willfully failed to do so within the meaning of subsections (g) and (n) of section 685 of the Tax Law for the period January 1, 1973 to March 9, 1973. Accordingly, petitioner is liable to a penalty pursuant to section 685(g) of the Tax Law equal to the total amount of the tax due from said corporation. This is estimated to be \$6,200.00 for the period at issue.

B. That the Audit Division is instructed to modify the Notice of Deficiency issued on May 19, 1975 in accordance with Conclusions of Law "A"; however, except as so modified, the Notice is otherwise sustained and the petition of Robert H. Binkerd is denied.


DATED: Albany, New York

SEP 10 1980

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER

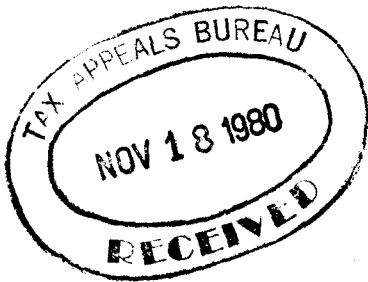
STATE OF NEW YORK  
State Tax Commission  
TAX APPEALS BUREAU  
STATE CAMPUS  
ALBANY, N. Y. 12227

Under \_\_\_\_\_  
 Address \_\_\_\_\_  
 In \_\_\_\_\_  
 No \_\_\_\_\_  
 No \_\_\_\_\_  
 Do not return in this envelope

~~Robert H. Binkerd  
4819 Beac Rd. #8A  
Liverpool, NY~~

Flt. Eng.

No better address  
11/19/80



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

Remailed  
~~September 19, 1980~~  
November 7, 1980

Robert H. Binkerd  
4819 Bear Rd., #8A  
Liverpool, New York

Dear Mr. Binkerd:

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  
Robert Oppenheimer  
1100 Crossroads Office Bldg.  
Rochester, NY 14614  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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DATED: Albany, New York

~~SEP 19 1980~~

NOV 07 1980

STATE TAX COMMISSION

*James W. Suelley*  
PRESIDENT

*Thomas H. Hogan*  
COMMISSIONER

*Francis P. Koenig*  
COMMISSIONER