

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of

James Callaway :

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 3rd day of October, 1980, he served the within notice of Decision by certified mail upon James Callaway, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

James Callaway  
605 Park Ave.  
New York, NY 10021

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  
3rd day of October, 1980.

Notary Bank

J. Vredenburg

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of

James Callaway :

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 3rd day of October, 1980, he served the within notice of Decision by certified mail upon Robert A. Jacobs, Esq. 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 A. Jacobs, Esq.  
Milgrim Thomajan & Jacobs, PC  
25 Broadway  
New York, NY 10004

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  
3rd day of October, 1980.

Eutha Bank

J. Vredenburg

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

October 3, 1980

James Callaway  
605 Park Ave.  
New York, NY 10021

Dear Mr. Callaway:

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 A. Jacobs, Esq.  
Milgrim Thomajan & Jacobs, PC  
25 Broadway  
New York, NY 10004  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

---

In the Matter of the Petition	:	
	:	
of	:	
	:	
JAMES CALLAWAY	:	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, James Callaway, 605 Park Avenue, New York, New York 10021, 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. 12545).

A formal hearing was held before Edward L. Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on July 15, 1977 at 11:30 A.M. Petitioner appeared by Milgrim, Thomajan & Jacobs, PC (Robert A. Jacobs, Esq., of counsel). The Audit Division appeared by Peter Crotty, Esq. (Irwin Levy, Esq., of counsel).

ISSUE

Whether petitioner should be held personally liable for unpaid New York State income taxes withheld by Mantle Men & Namath Girls, Inc. and by M.M.N.G. Temporaries, Inc. for 1970 and 1971.

FINDINGS OF FACT

1. Petitioner, James Callaway, as vice-president of Mantle Men & Namath Girls, Inc. (hereinafter "Mantle Men") signed and filed with the Income Tax Bureau several Employer's Semi-Monthly Returns of New York State Personal Income Tax Withheld (Form IT-2101, SM) for periods in 1971, ending with a "Final" return dated October 28, 1971. None of these returns was accompanied

by remittance of the income tax shown to be due on the return. These returns were for Employer No. 13-2637532, Mantle Men.

2. On March 25, 1974, the Income Tax Bureau issued a Notice of Deficiency, assessing petitioner, James Callaway, the sum of \$2,277.32 as a penalty under section 685(g) of the Tax Law. This penalty was detailed as follows:

<u>WITHHOLDING TAX PERIOD</u>	<u>AMOUNT</u>
4/1 to 6/30/71	\$ 429.12
7/1 to 7/31/71	402.50
9/1 to 9/30/71	1,115.10
Period 1971 Balance due	<u>330.60</u>
TOTAL DUE	\$2,277.32

Re: Mantle Men's, Employer's Acct. No. 13-2637532

3. On March 25, 1974, the Income Tax Bureau issued a Notice of Deficiency assessing petitioner, James Callaway, the sum of \$32,612.34 as a penalty under section 685(g) of the Tax Law, relating to the nonpayment of income taxes withheld by M.M.N.G. Temporaries, Inc. (hereinafter "MMNG") for 1970 and 1971. The Employer's Acct. No. was 13-2659340 and the penalty was itemized as follows:

<u>WITHHOLDING TAX PERIOD</u>	<u>AMOUNT</u>
1970 Balance due	\$ 8,547.20
10/1 to 10/31/71	526.16
1971 Balance due	<u>23,538.98</u>
TOTAL DUE	\$32,612.34

4. The amounts alleged to be due (as assessed by the Income Tax Bureau) have not been paid.

5. On June 18, 1974, petitioner, James Callaway, filed a petition for redetermination of the assessed deficiency, alleging therein, that although petitioner had been a corporate officer, the responsibilities for collecting, accounting for and paying over the taxes in question were in the hands of others. He averred that petitioner, James Callaway, had not been "...a person

who is under a duty to perform the act in respect of which the violation occurs", nor did he intentionally, consciously and voluntarily act in the nonpayment of the income tax withheld.

6. Mantle Men was a corporation which was formed, owned and controlled by Lois Holland Callaway, Inc. (hereinafter "Lois, Inc."), an advertising agency. The company, apparently established to exploit the then celebrated names of Mickey Mantle and Joe Namath, was engaged in the business of placing personnel on a permanent basis. Early in May, 1970, Mantle Men hired a man who was an expert in the field of placing temporary personnel and formed the MMNG Corporation. Melvyn A. Lischin (the one man in the three corporations who knew the temporary employment business) recruited personnel and generally handled "sales".

7. Collections and disbursements for both Mantle Men and MMNG were handled and controlled by Edgar Rohan, Comptroller of Lois, Inc. and by James Callaway, President of Lois, Inc. All checks were required to be signed by Edgar Rohan. Any one of several other officers of either Mantle Men or MMNG could be the other signatory.

8. Throughout 1970 and until October, 1971, when these corporations ceased doing business, both Mantle Men and MMNG were in a strained cash-flow situation; they were delinquent in paying Federal income withholding taxes. Installment payment arrangements with the Internal Revenue Service were made intermittently by Edgar Rohan and James Callaway of Lois, Inc. for the subsidiary corporations, Mantle Men and MMNG. They determined what creditors were to be paid and when.

9. On January 28, 1972, an involuntary petition in bankruptcy was filed against both Mantle Men and MMNG in the United States District Court for the Southern District of New York.

CONCLUSIONS OF LAW

A. That petitioner, James Callaway, was a person under a duty to collect, truthfully account for and pay over the tax imposed by the New York Tax Law. He was the president of the parent firm, Lois Holland Callaway, Inc., as well as an active corporate officer in both Mantle Men and MMNG subsidiary corporations.

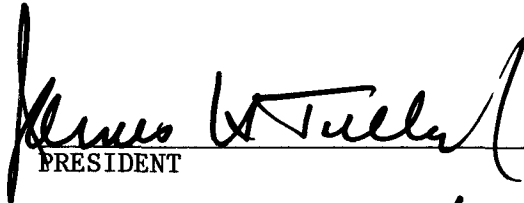
B. That petitioner, James Callaway, did willfully fail to pay over to the Income Tax Bureau, New York State income taxes withheld; and therefore, is liable for the penalty provided for in section 685(g) of the Tax Law.

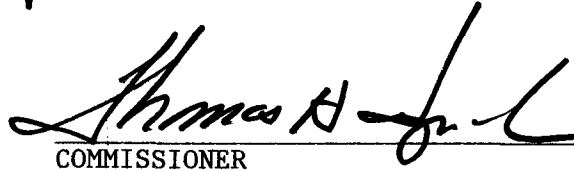
C. That the petition of James Callaway is denied and the notices of deficiency dated March 25, 1974 are sustained.


DATED: Albany, New York

STATE TAX COMMISSION

OCT 03 1980

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER