

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Robert W. Campbell :  
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 1973 - 1975. :

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 12th day of December, 1980, he served the within notice of Decision by certified mail upon Robert W. Campbell, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Robert W. Campbell  
3235 Cambridge Ave.  
Bronx, 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  
12th day of December, 1980.

Joan Schultz

J. Vredenburg

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Robert W. Campbell :  
for Redetermination of a Deficiency or a Revision :  
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Personal Income Tax :  
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AFFIDAVIT OF MAILING

State of New York  
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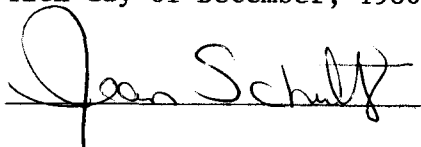
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 12th day of December, 1980, he served the within notice of Decision by certified mail upon Alan D. Pekelner the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

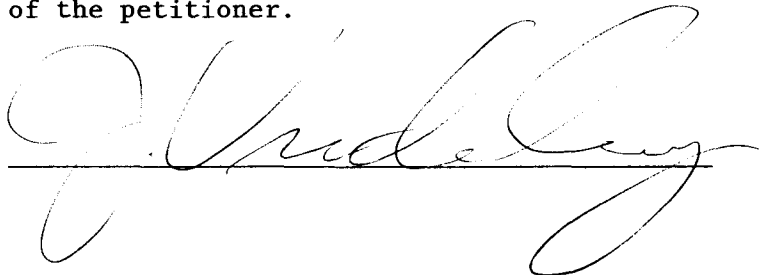
Mr. Alan D. Pekelner  
Blum, Haimoff, Gersen, Lipson, & Szabad  
270 Madison Ave.  
New York, NY 10016

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  
12th day of December, 1980.

  
\_\_\_\_\_  
Jean Schultz

  
\_\_\_\_\_  
Jay Vredenburg

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

December 12, 1980

Robert W. Campbell  
3235 Cambridge Ave.  
Bronx, NY

Dear Mr. Campbell:

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  
Alan D. Pikelner  
Blum, Haimoff, Gersen, Lipson, & Szabad  
270 Madison Ave.  
New York, NY 10016  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
ROBERT W. CAMPBELL : DECISION  
for Redetermination of a Deficiency or :  
for Refund of Personal Income Tax under :  
Article 22 of the Tax Law for the Years :  
1973 through 1975. :

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Petitioner, Robert W. Campbell, 3235 Cambridge Avenue, Bronx, New York, 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 1973 through 1975 (File No. 19674).

A formal hearing was held before William J. Dean, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 29, 1980 at 9:15 A.M. Petitioner appeared by Blum, Haimoff, Gersen, Lipson & Szabad, Esqs. (Alan David Pikelner, Esq., of counsel). The Audit Division appeared by Ralph J. Vecchio, Esq. (Abraham Schwartz, Esq., of counsel).

ISSUE

Whether petitioner was a person required to collect and pay over personal income taxes withheld from the employees of McKee-Berger-Mansueto, Inc.

FINDINGS OF FACT

1. By Notice of Deficiency dated April 21, 1977, the Audit Division notified petitioner of a deficiency in the amount of \$104,064.94. The claims against petitioner related to unpaid withholding taxes of McKee-Berger-Mansueto, Inc. (herein "MBM") for various withholding tax periods during the years in question.

2. At the formal hearing, the Audit Division agreed that the deficiency should be reduced from \$104,064.94 to \$59,350.88.

3. MBM was a construction consulting firm performing services for a variety of clients, private, public and institutional, primarily in the United States, but abroad as well. As a construction consulting firm, MBM provided estimating and consulting services to the owner or developer of a project who might not have the in-house ability to monitor the work of the architect and general contractor on the project to insure that the project was brought in on time and within the approved budget.

4. By professional training Mr. Campbell is a civil engineer. He also has a degree in business administration. He joined MBM in 1972 as a project manager. At that time there were some fifteen other project managers working for MBM. Each was in charge of a particular construction project. For many months during 1973 and 1974, Mr. Campbell was not physically on the premises of MBM's New York City headquarters office. During this period, he worked as manager at the site of a construction project in Brooklyn, New York.

5. Early in 1975, petitioner became MBM's Vice President of Operations. In this position he was responsible for field supervision of consulting activities. Project managers reported to Mr. Campbell. His job involved considerable travel, and supervising work efforts at construction sites and visiting job locations to ensure that the services for which MBM was hired were performed.

6. Mr. Campbell was not authorized to sign corporate checks.

#### CONCLUSIONS OF LAW

A. That petitioner was not a person under a duty to collect and pay over withholding taxes within the meaning of subdivisions (g) and (n) of section 685 of the Tax Law. As project manager for MBM, Mr. Campbell was merely one of fifteen project managers in the corporation responsible for supervising specific

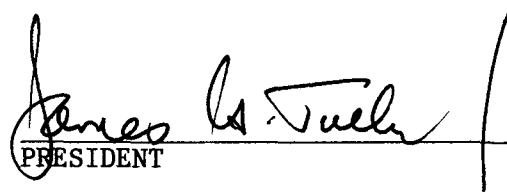
projects. As Vice President of Operations from 1975 on, Mr. Campbell assumed responsibility for supervising MBM's project managers, but he did not assume any responsibility over the financial affairs of MBM and he was never authorized to sign corporate checks.

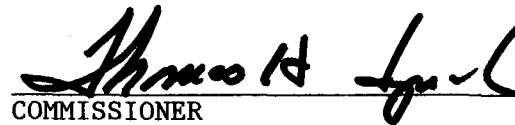
B. That the petition of Robert W. Campbell is granted and the Notice of Deficiency dated April 21, 1977 is cancelled.


DATED: Albany, New York

DEC 12 1980

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER

REQUEST FOR BETTER ADDRESS

Fr. Dc. (22) 12-12

Requested by <i>J. Oredenburg</i>	Unit: Appeals Bureau Room 107 - Bldg. #9 State Campus Albany, New York 12227	Date of Request <b>JAN 7 1981</b> <b>JAN 7 1981</b>
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Please find most recent address of taxpayer described below; return to person named above.

Social Security Number <i>116-26-4517</i>	Date of Petition <i>77-07-21</i>
Name <i>Robert W. Campbell</i>	
Address <i>3235 Cambridge Ave. Bronx, N.Y.</i>	

Results of search by Files

<input type="checkbox"/> New address:	
<input checked="" type="checkbox"/> Same as above, no better address '79	
<input type="checkbox"/> Other:	

Searched by <i>Neva McVie</i>	Section <i>Master Index</i>	Date of Search <i>1/9/80</i>
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PERMANENT RECORD

FOR INSERTION IN TAXPAYER'S FOLDER

CLAIM CHECK

NO. 608294

STATE OF NEW YORK

Tax Appeals Bureau

State Tax Commission

DATE 1-7-81

1ST NOTICE

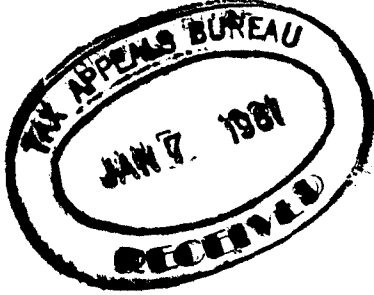
2ND NOTICE

RETURN

MAILING LABEL P30 8 15135

B/A sent 1-7-81

Robert W. Campbell  
3235 Cambridge Ave.  
Bronx, NY



Handwritten signature



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

December 12, 1980

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Bronx, NY

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Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Alan D. Pikelner  
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270 Madison Ave.  
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STATE OF NEW YORK

STATE TAX COMMISSION

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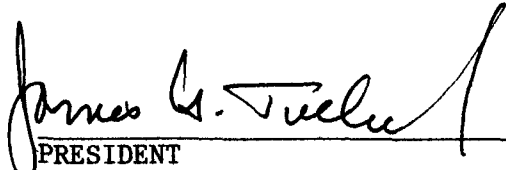
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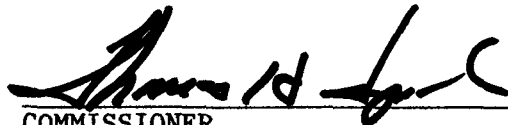
B. That the petition of Robert W. Campbell is granted and the Notice of Deficiency dated April 21, 1977 is cancelled.


DATED: Albany, New York

DEC 12 1980

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER