

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
John Ceparano :  
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 Year 1973. :

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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 18th day of June, 1980, he served the within notice of Decision by certified mail upon John Ceparano, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

John Ceparano  
261 Ontario St.  
Lake Ronkonkoma, NY 11779

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  
18th day of June, 1980.

Joanne Knapp

J. J. Vredenburg

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
John Ceparano :  
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 Year 1973. :

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 18th day of June, 1980, he served the within notice of Decision by certified mail upon Peter Blitzer 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. Peter Blitzer  
575 Madison Ave.  
New York, NY 10022

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  
18th day of June, 1980.

Joanne Knapp

J. J. Kelly

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

June 18, 1980

John Ceparano  
261 Ontario St.  
Lake Ronkonkoma, NY 11779

Dear Mr. Ceparano:

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  
Peter Blitzer  
575 Madison Ave.  
New York, NY 10022  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
JOHN CEPARANO : DECISION  
for Redetermination of a Deficiency or for :  
Refund of Personal Income Tax under Article 22 :  
of the Tax Law for the Year 1973. :

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Petitioner, John Ceparano, 261 Ontario Street, Ronkonkoma, New York 11779, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1973 (File No. 19866).

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 June 20, 1979 at 10:45 A.M. Petitioner appeared by Peter Blitzter, CPA. The Audit Division appeared by Peter Crotty, Esq. (Aliza Schwadron, Esq., of counsel).

#### ISSUE

Whether petitioner was a person required to collect, truthfully account for and pay over New York State withholding taxes of Aarden Security Services, Inc. in 1973, who willfully failed to do so, thereby making him liable to a penalty under section 685(g) of the Tax Law.

#### FINDINGS OF FACT

1. On March 28, 1977, the Income Tax Bureau issued a Notice of Deficiency and Statement of Deficiency against petitioner, John Ceparano, imposing a penalty of \$13,561.63 which was equal to the amount of the New York State withholding taxes of Aarden Security Services, Inc. ("Aarden") which were due and unpaid for the second and fourth calendar quarters of 1973.

2. Petitioner was president of Aarden with offices at 6143 Jericho Turnpike, Commack, New York 11725, an agency which supplied guards to firms for protection of property and personnel. Aarden was a wholly owned subsidiary of another corporation in which petitioner was a stockholder. He owned no stock in Aarden.

3. Petitioner was in charge of the day-to-day operations of Aarden, i.e. he placed men into jobs, he supervised their work, he did some of the billing, and attempted collection. He signed payroll checks, some manually and some by means of a machine using an authorized signature printing plate. Petitioner also signed some tax returns as president of Aarden. A New York State franchise return for 1972 was entered into evidence.

4. On December 4, 1973, Aarden was sold to Globe Security Corporation. All of the books and records were allegedly taken by the purchaser, which allegedly took all receivables and assumed all liabilities of the seller.

5. No data was presented as to whether Aarden had filed New York State withholding taxes on a monthly or quarterly basis. A reconciliation of employees' income taxes withheld, during 1973, was signed by petitioner on January 31, 1974 and filed with 873 wage and tax statements indicating that \$28,091.72 had been withheld. The Notice of Deficiency stated that for the periods April 1, 1973 to June 30, 1973 and October 1, 1973 to December 31, 1973 employees' income taxes amounting to \$13,561.63 had been reported but had not been paid over to New York State. The amount was neither disputed by petitioner nor payment shown.

#### CONCLUSIONS OF LAW

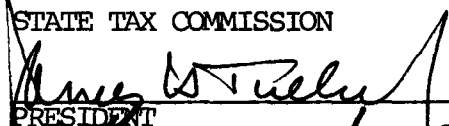

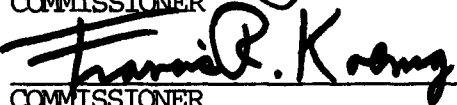
A. That as president and operating officer with signatory power for checks, who actually signed corporate tax returns, petitioner John Ceparano was a person required to collect, truthfully account for and pay over New York State withholding taxes due from Aarden Security Services, Inc. in 1973. Petitioner willfully failed to do so and is, therefore, liable within the meaning and intent of sections 685(g) and (n) of the Tax Law to a penalty equal to the amount of the unpaid

withholding tax amounting to \$13,561.63.

B. That the petition of John Ceparano is denied in all respects and the Notice of Deficiency dated March 28, 1977 is sustained.

DATED: Albany, New York

JUN 18 1980

STATE TAX COMMISSION  
  
PRESIDENT  
  
COMMISSIONER  
  
COMMISSIONER