

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Jerome C. Cook :

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. :

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AFFIDAVIT OF MAILING

State of New York  
County of Albany

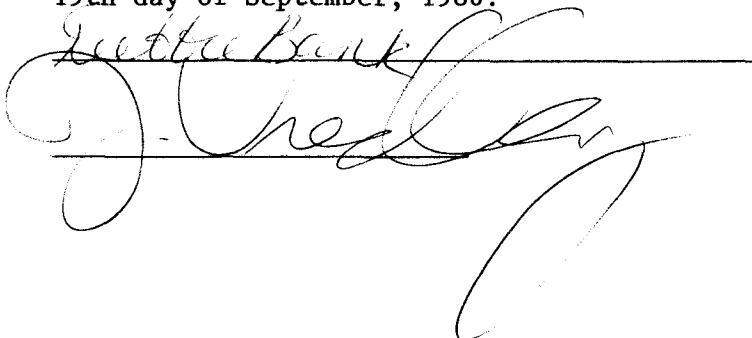
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 19th day of September, 1980, he served the within notice of Decision by certified mail upon Jerome C. Cook, the petitioner in the within proceeding,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

Jerome C. Cook  
29 Ridge Castle Dr.  
Rochester, NY 14622

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.

*Quetta Bank*  


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

September 19, 1980

Jerome C. Cook  
29 Ridge Castle Dr.  
Rochester, NY 14622

Dear Mr. Cook:

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

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
JEROME C. COOK : 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. :

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Petitioner, Jerome C. Cook, 29 Ridge Castle Drive, Rochester, New York 14622, 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. 10730).

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 pro se. 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, Jerome C. Cook, 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 personal income taxes withheld from Syracuse's employees' wages for the periods October 16, 1972 to November 30, 1972 and January 1, 1973 to March 9, 1973.

3. Petitioner, Jerome C. Cook was a director and treasurer of Syracuse Foundry, Inc. He owned 30 percent of the stock of Clutch Guard Corporation. Syracuse Foundry, Inc. was a subsidiary of the Clutch Guard Corporation. He never signed any checks for either company. During the periods in issue he operated four small nursing homes and a liquor store. He visited the foundry once and was outvoted when he desired to make a change in the presidency of Syracuse Foundry, Inc. His contact with said corporation was through his attorney who also owned 30 percent of the stock. He was aware of the corporation's financial problems and assumed that the other two stockholders, the president and the attorney would take care of the matter. Syracuse Foundry, Inc. had a comptroller, Robert H. Binkerd who was authorized to sign checks. Petitioner was not on the company payroll, and had no knowledge of day to day operations.

#### CONCLUSIONS OF LAW

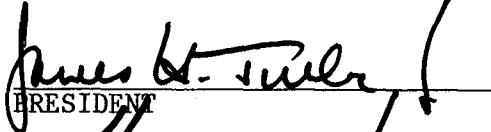
A. That petitioner, Jerome C. Cook, was not a person required to collect, truthfully account for and pay over the withholding taxes due from Syracuse Foundry, Inc. within the meaning of subsections (g) and (n) of section 685 of the Tax Law. Accordingly, petitioner is not liable to a penalty pursuant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

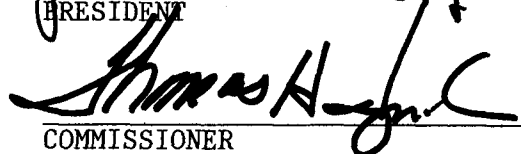
B. The petition of Jerome C. Cook is granted and the Notice of Deficiency issued against him on April 12, 1974 is cancelled.

DATED: Albany, New York

SEP 19 1980

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER