

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
of

Michael J. Cook

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 Year 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 20th day of June, 1980, he served the within notice of Decision by certified mail upon Michael J. Cook, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Michael J. Cook
9735 Mockingbird Dr., Apt. 9
Omaha, NB 68127

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 Krapp

J. J. Vredenburg

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

June 20, 1980

Michael J. Cook
9735 Mockingbird Dr., Apt. 9
Omaha, NB 68127

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

In the Matter of the Petition	:	
of	:	
MICHAEL J. COOK	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Year	:	
1971.	:	

Petitioner, Michael J. Cook, 9735 Mockingbird Drive, Apartment 9, Omaha, Nebraska 68127, 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 1971 (File No. 10732).

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 pro se. 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.

FINDINGS OF FACT

1. On March 31, 1975, the Income Tax Bureau issued a Statement of Deficiency against petitioner, Michael J. Cook, imposing a penalty equal to the amount of New York State withholding taxes due from Megadyne Industries, Inc. ("Megadyne") for the period January 1, 1971 to December 31, 1971. 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, a Notice of Deficiency was issued to him on March 31, 1975 for \$5,596.46.

2. Megadyne failed to pay over to the New York State Income Tax Bureau personal income taxes withheld from the wages of Megadyne's employees for the period January 1, 1971 to December 31, 1971; this amounted to \$5,596.46.

3. Following his graduation from the University of Rochester, petitioner, Michael J. Cook, worked for a year for Megadyne and earned \$2.50 per hour. At first he was a production worker and then he became involved in calculating product costs. He also performed odd jobs when required to do so, but was terminated on or about February 15, 1972. After leaving Megadyne, he was given some twenty-five shares of Megadyne's stock in the latter part of 1972 by his father, Jerome Cook, who was chairman of the Board of Directors. At the same time, Michael J. Cook was appointed to the Board of Directors, but had no financial responsibilities.

CONCLUSIONS OF LAW

A. That during the period herein at issue, petitioner, Michael J. Cook, was not a person required to collect, truthfully account for and pay over the withholding taxes due from Megadyne Industries, Inc., within the meaning of sections 685(g) and (n) 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 the tax due from said corporation.

B. That the petition of Michael J. Cook is granted and the Notice of Deficiency issued against him on March 31, 1975 is cancelled.

DATED: Albany, New York

JUN 20 1980

STATE TAX COMMISSION

James W. Tully
PRESIDENT

Thomas H. [unclear]
COMMISSIONER

Francis R. Koeng
COMMISSIONER