

STATE OF NEW YORK  
STATE TAX COMMISSION

\_\_\_\_\_ :  
In the Matter of the Petition :  
of :  
Carl E Drumheller :  
: 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 1971 & 1972. :  
\_\_\_\_\_ :

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 Carl E Drumheller, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Carl E Drumheller  
265 Thornell Rd.  
Pittsford, NY 14534

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 Knapp

J. J. Vredenburg

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Carl E Drumheller :  
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 1971 & 1972. :

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 20th day of June, 1980, he served the within notice of Decision by certified mail upon Robert Oppenheimer 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 Oppenheimer  
1100 Crossroads Office Bldg.  
Rochester, NY 14614

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  
20th day of June, 1980.

Joanne Knapp

J. J. Vredenburg

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

June 20, 1980

Carl E Drumheller  
265 Thornell Rd.  
Pittsford, NY 14534

Dear Mr. Drumheller:

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 Oppenheimer  
1100 Crossroads Office Bldg.  
Rochester, NY 14614  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petitions :  
of :  
CARL E. DRUMHELLER : DECISION  
for Redetermination of Deficiencies or for :  
Refund of Personal Income Tax under Article :  
22 of the Tax Law for the Years 1971 and :  
1972. :

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Petitioner, Carl E. Drumheller, 265 Thornell Road, Pittsford, New York 14534, filed petitions for redetermination of deficiencies or for refund of personal income tax under Article 22 of the Tax Law for the years 1971 and 1972 (File Nos. 10733 and 15528).

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 by Robert Oppenheimer, Esq. 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 and 1972.

FINDINGS OF FACT

1. On September 30, 1974 and August 25, 1975, the Income Tax Bureau issued statements of deficiency against petitioner, Carl E. Drumheller, imposing penalties equal to the amount of New York State withholding taxes due from Megadyne Industries, Inc. for the periods January 1, 1971 to December 31, 1971 and for June 1, 1972

to December 31, 1972. 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. On September 30, 1974 and on August 25, 1975, notices of deficiency were issued to him for \$5,596.46 and \$6,232.60, respectively.

2. Megadyne Industries, Inc. ("Megadyne") failed to pay over to the New York State Income Tax Bureau personal income taxes withheld from employees' wages for the periods January 1, 1971 to December 31, 1971 and for June 1, 1972 to December 31, 1972; this amounted to \$11,829.06 (\$5,596.46 for 1971 and \$6,232.60 for 1972).

3. Petitioner, Carl E. Drumheller, was co-founder of Megadyne Industries, Inc., and was president and a stockholder of Megadyne during 1971 and 1972. He attended regular meetings to go over Megadyne's cash flow with others, and then directed various payments to be made; he resigned on or about November 3, 1972. He signed many of the semi-monthly returns for New York State personal income tax withheld from employees during the periods in issue. He participated in negotiations with Central Trust Bank of Rochester regarding payment schedules on Federal taxes.

#### CONCLUSIONS OF LAW

A. That petitioner, Carl E. Drumheller, was a person required to collect, truthfully account for and pay over the withholding taxes due from Megadyne Industries, Inc. prior to November 3, 1972 within the meaning of subsections (g) and (n) of section 685 of the Tax Law; petitioner willfully failed to do so. Therefore, petitioner is liable to a penalty pursuant to section 685(g) of the Tax Law, equal to the total amount of tax due from said corporation for the periods January 1, 1971 to December 31, 1971 and for June 1, 1972 to November 3, 1972.

B. That the Audit Division is directed to modify the Notice of Deficiency issued on August 25, 1975, in accordance with Conclusion of Law "A;" that except as so modified, the notices of deficiency are sustained and the petitions of Carl E. Drumheller are otherwise denied.

DATED: Albany, New York

JUN 20 1980

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER