

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
James R. Joyce :  
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 22nd day of February, 1980, he served the within notice of Decision by certified mail upon James R. Joyce, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

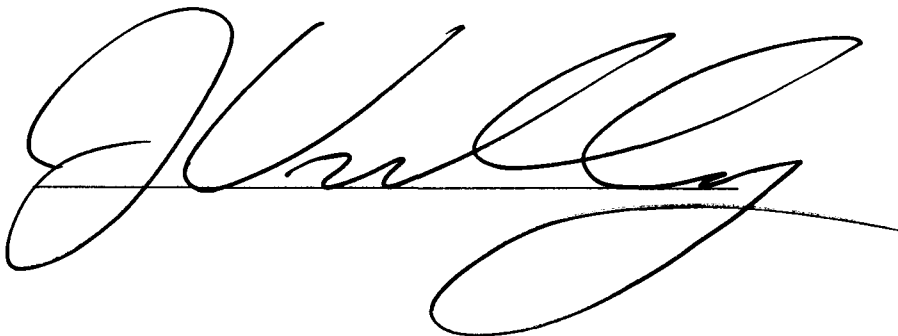
James R. Joyce  
97 Durham Ave.  
Buffalo, NY 14215

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  
22nd day of February, 1980.

Joanne Knapp



STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
James R. Joyce :  
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 22nd day of February, 1980, he served the within notice of Decision by certified mail upon Marvin T. Dubin the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

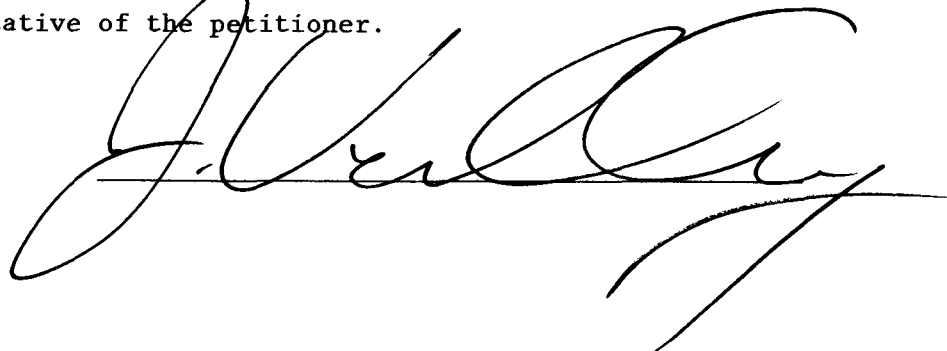
Mr. Marvin T. Dubin  
700 Walbridge Bldg.  
Buffalo, NY 14202

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  
22nd day of February, 1980.

Joanne Knapp



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

February 22, 1980

James R. Joyce  
97 Durham Ave.  
Buffalo, NY 14215

Dear Mr. Joyce:

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  
Marvin T. Dubin  
700 Walbridge Bldg.  
Buffalo, NY 14202  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition  
of  
JAMES R. JOYCE  
for Redetermination of a Deficiency or  
for Refund of Personal Income Tax under  
Article 22 of the Tax Law for the Years  
1971 and 1972.

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DECISION

Petitioner, James R. Joyce, 97 Durham Avenue, Buffalo, New York 14215, 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 1971 and 1972 (File No. 10761).

A formal hearing was held before Alan R. Golkin, Hearing Officer, at the offices of the State Tax Commission, State Office Building, 65 Court Street, Buffalo, New York, on May 17, 1978 at 11:30 A.M. Petitioner appeared by Marvin T. Dubin, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Alexander Weiss, Esq., of counsel).

ISSUE

Whether petitioner is liable to a penalty in an amount equal to the unpaid withholding taxes of Paper Tubes, Inc.

FINDINGS OF FACT

1. On November 27, 1972, the Income Tax Bureau issued a Statement of Deficiency and a Notice of Deficiency against petitioner, James R. Joyce, imposing a penalty equal to the unpaid withholding taxes of Paper Tubes, Inc. in the following amounts:

<u>Period</u>	<u>Amount</u>
1/1/71 - 9/30/71	\$10,779.66
11/1/71 - 11/30/71	1,415.92
12/1/71 - 12/15/71	501.51
1971 Balance Due	891.55
1/1/72 - 2/4/72	<u>1,432.39</u>
Total Due	\$15,021.03

The penalty was imposed under section 685(g) of the Tax Law.

2. Petitioner was initially employed by Paper Tubes, Inc. on September 6, 1971, as its Comptroller.

3. Petitioner first became aware that wage withholding reports and payments were delinquent in early October of 1971. He promptly filed all reports then due, upon the direction of the corporate officers.

4. Petitioner made no remittances, since he lacked the authority to sign checks; however, petitioner did prepare the necessary checks and presented them to the appropriate officers for signature and mailing, and frequently reminded them to pay those items.

5. Petitioner was not a corporate officer, director, or stockholder, and held only an administrative position with no fiduciary privileges or responsibilities.

6. Petitioner never signed any checks, although he or his assistants prepared all checks; he responded solely to directions from the corporate officers who specified which checks could be mailed in payment of whichever debts they chose to pay.

7. Petitioner was never authorized by corporate officers to issue checks which remitted withholding taxes.

8. Petitioner was an employee of Paper Tubes, Inc., for whom wage withholdings were not paid; in fact, petitioner was not even paid his own wages for his last month of work.

CONCLUSIONS OF LAW

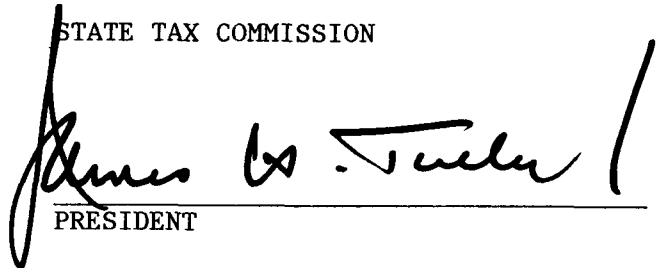
A. That petitioner, James R. Joyce, was not a person required to collect, truthfully account for and pay over New York State personal income taxes withheld by Paper Tubes, Inc. within the meaning of subsections (g) and (n) of section 685 of the Tax Law. Accordingly, petitioner is not subject to a penalty in an amount equal to the unpaid withholding taxes for Paper Tubes, Inc. under subsection (g) of section 685 of the Tax Law.

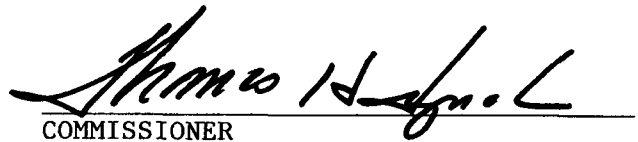
B. That the petition of James R. Joyce is granted and the Notice of Deficiency issued November 27, 1972 is cancelled.

DATED: Albany, New York

FEB 22 1980

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

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COMMISSIONER