

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Charles Krpata :
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 1970. :

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 25th day of July, 1980, he served the within notice of Decision by certified mail upon Charles Krpata, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Charles Krpata
15 Lincoln Ave.
E. Massapequa, NY 11758

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
25th day of July, 1980.

Deborah A Bank

Jay Vredenburg

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

July 25, 1980

Charles Krpata
15 Lincoln Ave.
E. Massapequa, NY 11758

Dear Mr. Krpata:

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 Petitions
of
CHARLES KRPATA and RAYMOND KRPATA
for Redetermination of Deficiencies or
for Refund of Personal Income Tax under
Article 22 of the Tax Law for the Year
1970.

DECISION

Petitioners, Charles Krpata, 15 Lincoln Avenue, East Massapequa, New York 11758 and Raymond Krpata, 361 North Wyoming Street, North Massapequa, New York 11758, filed petitions for redetermination of deficiencies or for refund of personal income tax under Article 22 of the Tax Law for the year 1970 (File Nos. 14104 and 15309).

A formal hearing was held before Archibald F. Robertson, Jr., Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on November 16, 1977 at 10:45 A.M. Petitioner Raymond Krpata appeared by Elias Mann, Esq. Charles Krpata did not appear. The Audit Division appeared by Peter Crotty, Esq. (James Morris, Esq., of counsel).

ISSUES

I. Whether petitioner Charles Krpata, as the president of Brothers Coach Corporation, was a person (within the meaning of section 685(g) of the Tax Law) required to collect, account for and pay over personal income taxes withheld from the employees of Brothers Coach Corporation.

II. Whether petitioner Charles Krpata willfully failed (within the meaning of section 685(g) of the Tax Law) to collect, account for and pay over such taxes, and was therefore liable to a penalty under section 685(g) of the Tax Law.

III. Whether petitioner Raymond Krpata, as the secretary-treasurer of Brothers Coach Corporation, was a person (within the meaning of section 685(g) of the Tax Law) required to collect, account for and pay over personal income taxes withheld from the employees of Brothers Coach Corporation.

IV. Whether petitioner Raymond Krpata willfully failed (within the meaning of section 685(g) of the Tax Law) to collect, account for and pay over such taxes, and was therefore liable to a penalty under section 685(g) of the Tax Law.

FINDINGS OF FACT

1. On October 30, 1972, notices of deficiency and statements of deficiency were issued by the Income Tax Bureau to petitioners Charles Krpata and Raymond Krpata for \$31,181.91, representing penalties imposed under section 685(g) of the Tax Law, for the willful failure to collect and pay over withholding taxes to New York State. On December 18, 1974, the Bureau abated \$6,082.65 of the penalty imposed against each petitioner.

2. At the hearing, the representative of the Audit Division and the representative of petitioner Raymond Krpata stipulated that because payments had been received through bankruptcy proceedings of Brothers Coach, the penalty amount at issue was \$14,157.65.

3. Petitioner Raymond Krpata, together with his brothers Alfred and Charles, owned and operated the Brothers Coach Corporation (hereinafter "Brothers Coach"), a New York transportation corporation located in Hewlett, New York. The corporation operated approximately 500 school buses, employing 700 drivers and 72 maintenance personnel. Brothers Coach went bankrupt in 1970.

4. Petitioner Raymond Krpata acted predominantly as superintendent of maintenance and repair for Brothers Coach throughout the fifteen years prior to its bankruptcy.

5. Petitioner Raymond Krpata worked out of the garage facilities located at Railroad Avenue, Hewlett, New York. The executive offices of Brothers Coach were located within the same building, on the floor directly above the garage facilities.

6. Petitioner Raymond Krpata was secretary-treasurer of Brothers Coach for five to seven years prior to its final discharge in bankruptcy in November, 1970. Petitioner Charles Krpata and petitioners' brother Alfred, were, respectively, president and vice-president of Brothers Coach.

7. Petitioner Raymond Krpata did not sign any corporate checks or tax returns during 1968, 1969 and 1970.

8. Petitioner Raymond Krpata spent most of each working day throughout the period herein involved fulfilling his duties as mechanic and maintenance supervisor for Brothers Coach, and for two of its wholly-owned subsidiaries. Petitioner Raymond Krpata spent virtually no time during 1970 either attending to his duties as secretary-treasurer or seeing to it that they were attended to.

9. Petitioner Raymond Krpata did not resign as secretary-treasurer of Brothers Coach.

10. Petitioner Raymond Krpata made no effort to carry out his duties as secretary-treasurer in 1970.

11. Petitioner Charles Krpata, president of Brothers Coach during the period herein involved, did not appear at the formal hearing, offered no reason for not appearing, and was, therefore in default.

CONCLUSIONS OF LAW

A. That petitioner Raymond Krpata, as secretary-treasurer of Brothers Coach, was a "person" (within the meaning of section 685(g) of the Tax Law) required to collect, account for and pay over withholding taxes of Brothers

Coach Corporation for 1970 to the State of New York (section 685(n) of the Tax Law).

B. That petitioner Raymond Krpata willfully kept himself ignorant of the financial and tax status of Brothers Coach. As a result, he willfully failed to collect, account for and pay over such taxes within the meaning of section 685(g) of the Tax Law; therefore, said petitioner is liable to a penalty under section 685(g) of the Tax Law equal to the unpaid withholding taxes of Brothers Coach Corporation.

C. That the amount of unpaid withholding taxes of Brothers Coach is \$14,157.65 and the Audit Division is directed to accordingly modify the deficiencies issued against the petitioners on October 30, 1972.

D. That the default of petitioner Charles Krpata is duly noted.

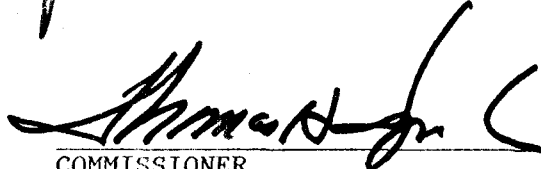
E. That the notices of deficiency as modified are sustained and the petition of Raymond Krpata and Charles Krpata are denied.

DATED: Albany, New York


JUL 25 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER

I dissent


COMMISSIONER

COMMISSIONER