

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Frank G. Mangano :
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 Period 6/16/75-12/31/75. :

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 5th day of September, 1980, he served the within notice of Decision by certified mail upon Frank G. Mangano, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Frank G. Mangano
434 E. 52nd St.
New York, NY 10022

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
5th day of September, 1980.

Debbie Bank

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

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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 5th day of September, 1980, he served the within notice of Decision by certified mail upon Chester B. Salomon 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. Chester B. Salomon
Salomon & Thal
919 Third Ave.
New York, NY 10022

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
5th day of September, 1980.

Debra Bank

J. Vredenburg

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

September 5, 1980

Frank G. Mangano
434 E. 52nd St.
New York, NY 10022

Dear Mr. Mangano:

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 month 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
Chester B. Salomon
Salomon & Thal
919 Third Ave.
New York, NY 10022
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
FRANK G. MANGANO
for Redetermination of a Deficiency or
for Refund of Personal Income Tax under
Article 22 of the Tax Law for the Period
June 16, 1975 through December 31, 1975.

DECISION

Petitioner, Frank G. Mangano, 434 East 52nd Street, New York, New York 10022, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the period June 16, 1975 through December 31, 1975 (File No. 21475).

A small claims hearing was held before William Valcarcel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 7, 1980 at 1:15 P.M. Petitioner appeared by Chester B. Salomon, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (A. Scopellito, Esq., of counsel).

ISSUE

Whether petitioner, Frank G. Mangano, is subject to a penalty under section 685(g) of the Tax Law, as a person who willfully failed to collect, truthfully account for and pay over withholding taxes.

FINDINGS OF FACT

1. ALF Industries, Inc., (ALF) a corporation organized and located in the State of New York, filed an employer's return (IT-2101) without remittance for the following periods:

<u>PERIODS</u>	<u>TAX WITHHELD</u>
6/16/75 - 6/30/75	185.31
7/1/75 - 7/15/75	200.98
7/16/75 - 7/31/75	20.58

2. On November 28, 1977, the Audit Division issued a Notice of Deficiency in the sum of \$2,951.27, along with an explanatory Statement of Deficiency, on which a penalty pursuant to section 685(g) of the Tax Law was imposed against petitioner, Frank G. Mangano. The deficiency of \$2,951.27 consisted of a penalty equal to the amount of withholding tax due (Finding of Fact "1", supra) and an amount of \$2,544.40, which was an estimated amount of withholding tax for the period August 1, 1975 through December 31, 1975. The source or basis of the estimated amount of \$2,544.40 was not revealed by the Audit Division.

3. Petitioner, Frank G. Mangano, conceded that he was a responsible corporate officer of ALF and conceded the penalty of \$406.87 imposed for the period June 16, 1975 through July 31, 1975. However, petitioner challenged the penalty of \$2,544.40 imposed for the period August 1, 1975 through December 31, 1975.

4. Petitioner, Frank G. Mangano, rendered sworn testimony that during the period August 1, 1975 through December 31, 1975, ALF was inactive and had no employees or payroll. In support of his testimony, petitioner submitted for examination, the books and records of ALF, which revealed no transactions after July 31, 1975. In addition, a sworn statement was submitted from a former employee certifying that she was the sole employee upon her departure in July, 1975, and that there were no other employees after that date.

5. Although petitioner remained with ALF after July 31, 1975, no wages were paid to him, or anyone else after that date by ALF.

CONCLUSIONS OF LAW

A. That ALF Industries, Inc., was not required to deduct and withhold personal income taxes under section 671 of the Tax Law during the period August 1, 1975 through December 31, 1975.

B. That petitioner, Frank G. Mangano, is not subject to a penalty under section 685(g) of the Tax Law, for the period August 1, 1975 through December 31, 1975.

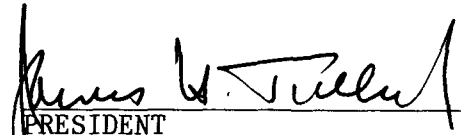
C. That the petition of Frank G. Mangano is granted to the extent that the penalty imposed in accordance with section 685(g) of the Tax Law is reduced from \$2,951.27 to \$406.87.

D. That the Audit Division is hereby directed to modify accordingly the Notice of Deficiency issued November 28, 1977; and that, except as so granted, the petition is in all other respects denied.

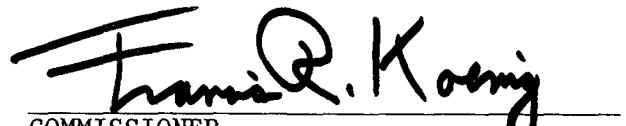
DATED: Albany, New York

STATE TAX COMMISSION

SEP 05 1980


PRESIDENT


COMMISSIONER


COMMISSIONER