

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of

Nicholas Ragone :

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 1969 - 1973. :

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 14th day of October, 1980, he served the within notice of Decision by certified mail upon Nicholas Ragone, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Nicholas Ragone
228 Rose St.
Massapequa, NY

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
14th day of October, 1980.

Deborah A. Brink

Jay Vredenburg

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

October 14, 1980

Nicholas Ragone
228 Rose St.
Massapequa, NY

Dear Mr. Ragone:

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	:	
	:	
NICHOLAS RAGONE	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Years	:	
1969 through 1973.	:	

Petitioner, Nicholas Ragone, 228 Rose Street, Massapequa, New York 11762, 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 1969 through 1973 (File No. 11295).

A formal hearing was held before Edward Goodell, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 23, 1980 at 2:15 A.M. Petitioner appeared pro se. The Audit Division appeared by Peter Crotty, Esq. (William Fox, Esq., of counsel).

ISSUE

Whether petitioner is a person required to collect, truthfully account for and payover withholding taxes of Barstan Electronics Corporation also known as S & R Electronics and Barstan Electronics Corp. for the tax years 1969 to and including 1972 and the tax period January 1 to May 8, 1973.

FINDINGS OF FACT

1. Barstan Electronics Corporation also known as S & R Electronics & Barstan Electronics Corp., failed to pay personal income taxes withheld from the wages of that company's employees in the amount of \$8,015.50 for the years 1969 through 1972 and for the tax period beginning January 1, 1973 and ending May 8, 1973.

2. On March 25, 1974, the Income Tax Bureau issued a Notice of Deficiency and a Statement of Deficiency against the petitioner, Nicholas Ragone, asserting a penalty equal to the amount of unpaid New York State withholding tax due from "S & R Electronics & Barstan Elec. Corp." for the aforesaid period at issue, namely the said sum of \$8,015.50, upon the ground that "available information indicates that you are a 'person' as defined in Section 685(n) and liable to a penalty under Section 685(g)."

3. In or about 1967 and 1968 Barstan Electronics Corporation, a Delaware Corporation, was engaged in the business of the wholesale and retail sale of parts for and the making of repairs to television and radio sets.

Said business, during said period, was conducted in a store located in Lindenhurst, Long Island.

One Stanley Winston, was the President of said corporation during said period with an office in said store.

During said period the petitioner, Nicholas Ragone, was an employee of said corporation in the capacity of manager of said store.

4. In or about 1969 Barstan Electronics Corporation entered into an agreement with S & R Electronics pursuant to which it purchased from S & R Electronics three stores located on Long Island including one store located at Bethpage, Long Island. Thereafter, during the period at issue, Barstan Electronic Corporation was the owner of four stores on Long Island, including the aforesaid store located at Lindenhurst, Long Island. The business of at least one of said four stores, namely the aforesaid store located at Bethpage, Long Island, appears to have been conducted during the period at issue in the name of "S & R Electronics & Barstan Electronic Corp."

5. Shortly after Barstan Electronics Corporation purchased the aforesaid three stores from S & R Electronics and in or about 1969, it "went public",

selling shares of its stock to the public. At the time that this took place, in or about the year 1969, the following were the persons who were the officers and directors of Barstan Electronics Corporation, the offices held by each of them and the number of its shares of stock held by each of them:

<u>Name</u>	<u>Office</u>	<u>Shares Held</u>
Richard A. Barten	Chairman of the Board of Directors	22,500
Stanley Winston	President and Director	94,250
Michael Tannehauser	Vice-President and Director	9,000
Murray F. Rosenthal	Secretary and Director	4,000
Martin R. Ross	Director	26,000
Nicholas K. Ragone	Vice President of Sales and Treasurer	2,000

6. Petitioner purchased the shares of stock of Barstan Electronics Corporation held by him as aforesaid at the rate of 5 cents a share and paid a total of \$100.00 for the 2,000 shares held by him.

7. It is the claim of the petitioner that he was named Vice-President of Barstan Electronics Corporation in or about 1969, shortly before it "went public", as a matter of convenience for the corporation in connection with its issuance of a prospectus at that time.

8. Petitioner was given authority to sign the checks of Barstan Electronics Corporation in the event of the inability of Stanley Winston to do so, but that authority was revoked "a couple of months after it happened" and, in fact, petitioner never signed a check on behalf of the corporation.

9. All checks of Barstan Electronics Corporation were signed by Stanley Winston without counter signature.

10. After Barstan Electronics Corporation "went public", petitioner continued to perform the same services that he had rendered prior thereto, namely continuing to act as manager of the aforesaid store located in Lindenhurst,

Long Island, supervising the employees "behind the counter", "making sure the sales were up" and that "the people would do their job".

Petitioner did not order merchandise, did not pay any of the bills for the operation of the store, did not sign any agreement on behalf of the corporation with suppliers or creditors, did not prepare the payroll for the employees of the store, did not prepare the payroll records or give instructions to the bookkeeper, did not sign any of the corporate tax returns, did not sign the prospectus, did not sign the "corporate certificate", and at no time between "October 1, 1969 and April 1972", when he left the corporation, did he "at any time sign any check at all for the corporation".

11. On or about April 19, 1972, the petitioner and Barstan Electronics Corporation entered into and executed an agreement providing, among other things, for the termination and cancellation of the employment agreement between the petitioner and the said corporation dated March 10, 1969, the concurrent resignation of the petitioner as an officer of the corporation and the exchange of mutual general releases "except for any salary due the employee up to the date of his leaving the employ of the corporation."

Pursuant to said agreement, mutual general releases, with the exception aforesaid, dated April 27, 1969, were executed and exchanged, and on that day the petitioner left the employ of Barstan Electronics Corporation.

12. Approximately a year after the petitioner left the employ of Barstan Electronics Corporation, as aforesaid, the said corporation filed a petition for bankruptcy.

13. Mehran W. Davidian, an attorney with offices at 645 Madison Avenue, New York City, addressed a letter to petitioner dated May 19, 1974, stating he "was requested by Mr. Stanley Winston to act" on behalf of the petitioner "concerning the notice of deficiency -- received from the New York State

Department of Taxation and Finance -- claiming that tax is due for the years 1969 - 1973 from S & R Electronics and Barstan Elec. Corp. and that you were a responsible officer of them during that time period." With his letter Mr. Davidian submitted a power of attorney, "strictly limited to the defense of the notice of deficiency", and, pursuant thereto, timely prepared and filed the petition herein on the ground that "Nicholas Ragone is not a responsible employee of S & R Electronics and Barstan Elec. Corp."

Mr. Davidian did not appear at the hearing herein for the reason that he had "had a heart attack".

CONCLUSIONS OF LAW

A. That the petitioner, Nicholas Ragone, is not a "person" as defined by Section 685(n) of the Tax Law who was under a duty to collect, truthfully account for and pay over withholding taxes for the tax years 1969 through 1972 and the tax period January 1, 1973 to May 8, 1973 with respect to Barstan Electronics Corporation also known as S & R Electronics and Barstan Electronics Corp., and therefore, is not liable for a penalty under section 685(g) of the Tax Law.

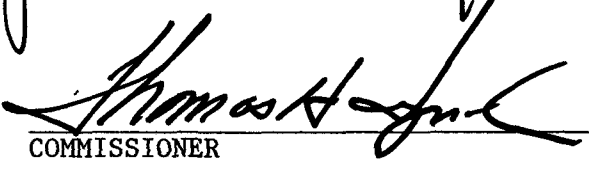
B. That the petition of Nicholas Ragone is granted and the Notice of Deficiency issued March 25, 1974 is cancelled.

DATED: Albany, New York

OCT 14 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER