

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Edward G. Ruch :
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 - 1975. :

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 31st day of October, 1980, he served the within notice of Decision by certified mail upon Edward G. Ruch, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Edward G. Ruch
8593 Howard Dr.
Williamsville, NY 14221

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
31st day of October, 1980.

Deborah A. Bank

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of

Edward G. Ruch :

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
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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 31st day of October, 1980, he served the within notice of Decision by certified mail upon Arnold N. Zelman 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. Arnold N. Zelman
1360 Statler Hilton 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
31st day of October, 1980.

Deborah A. Bank

J. Vredenburg

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

October 31, 1980

Edward G. Ruch
8593 Howard Dr.
Williamsville, NY 14221

Dear Mr. Ruch:

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
Arnold N. Zelman
1360 Statler Hilton Bldg.
Buffalo, NY 14202
Taxing Bureau's Representative

2/16 - 6/30/73	\$27,083.50	5/16 - 5/31/74	3,977.89
7/1 - 12/31/73	45,149.79	6/16 - 6/30/74	3,764.48
1/1 - 1/15/74	1,285.61	7/1 - 7/15/74	3,683.80
1/16 - 1/31/74	1,643.32	7/16 - 7/31/74	3,845.92
2/1 - 2/15/74	1,661.92	8/1 - 8/15/74	895.17
2/16 - 2/28/74	1,663.35	8/16 - 8/31/74	627.92
3/1 - 3/15/74	1,706.75	9/1 - 9/15/74	5,020.89
3/16 - 3/31/74	2,594.91	9/16 - 9/30/74	5,699.70
4/1 - 4/15/74	1,745.16	10/1 - 10/15/74	4,983.32
4/16 - 4/30/74	1,548.48		

TOTAL DUE - \$118,581.88

2. On April 12, 1976, the Audit Division issued a Notice of Deficiency and Statement of Deficiency against petitioner imposing a penalty equal to the unpaid withholding taxes of Municipal Paving, Inc. in the following amounts for 1974 and 1975:

5/1 - 5/15/74	\$ 2,074.05
6/1 - 6/15/74	3,558.11
10/16 - 10/31/74	6,431.55
11/1 - 11/15/74	8,510.83
11/16 - 11/30/74	3,879.30
12/1 - 12/15/74	2,588.00
12/16 - 12/31/74	4,637.89
1/1 - 1/15/75	1,674.44
1/16 - 1/31/75	2,767.23
2/1 - 2/15/75	<u>1,644.87</u>

TOTAL DUE \$ 37,766.27

3. On March 29, 1976, the Audit Division issued a Notice of Deficiency and Statement of Deficiency against petitioner imposing a penalty equal to the unpaid withholding taxes of Associated Planning and Development Corp. in the following amounts for the years 1974 and 1975:

1/1 - 4/30/74	\$ 701.83
8/1 - 8/31/74	624.41
9/1 - 9/30/74	231.33
10/1 - 10/31/74	251.72
11/1 - 11/30/74	242.86
1/1 - 1/15/75	<u>101.48</u>

TOTAL DUE \$2,153.63

4. On March 29, 1976, the Audit Division issued a Notice of Deficiency and Statement of Deficiency against petitioner imposing a penalty equal to the unpaid withholding taxes of Transit Paving, Inc., in the amount of \$96,409.32 for the calendar year 1972.

5. On March 29, 1976, the Audit Division issued a Notice of Deficiency and Statement of Deficiency against petitioner imposing a penalty equal to the unpaid withholding taxes of Transitgrade, Inc. in the amount of \$5,179.46 for the calendar year 1971.

6. On March 28, 1977, the Audit Division issued a Notice of Deficiency and Statement of Deficiency against petitioner imposing a penalty equal to the unpaid withholding taxes of Municipal Paving, Inc., for the following amounts for the year 1975:

2/16	-	2/28/75	\$1,551.73
3/1	-	3/15/75	1,034.10
3/16	-	3/31/75	393.33
4/1	-	4/15/75	<u>30.64</u>
TOTAL DUE			\$3,009.80

7. The penalties all set forth hereinabove were imposed under section 685(g) of the Tax Law.

8. Petitioner was never a stockholder of any of the above-named corporations, but petitioner, a Certified Public Accountant, did serve as comptroller, as an employee, as secretary and as a director of each corporation. Petitioner held his position as comptroller, the office of secretary and membership on the Board of Directors of the corporation at the pleasure of the majority stockholder, Pasquale Cipolla.

9. Petitioner had no authority over the selection of the members of the Board of Directors of the corporation, the hiring and firing of employees, the opening, closing and/or changing of bank accounts, payment of creditors, and payment of taxes.

10. Petitioner technically had authority to sign checks on some bank accounts, but his continued employment was contingent upon obedience to Mr. Cipolla who decided what to pay and when, and petitioner's check-signing authority was only as a convenience to Mr. Cipolla.

11. Petitioner, as an employee, prepared, signed and filed some or all withholding tax reports, but he enclosed no remittance pursuant to the express instructions of Mr. Cipolla.

12. The said Mr. Cipolla executed an Affidavit and appeared personally to testify and confirm that he alone, and not petitioner, had actual authority to pay over taxes for the above-named corporations.

13. Petitioner actually resigned from all positions as an officer or director of the aforesaid corporations on February 28, 1975.

CONCLUSIONS OF LAW

A. That petitioner, Edward G. Ruch, was not a person required to collect, truthfully account for and pay over New York State personal income taxes withheld by Associated Planning and Development Corp., Transitgrade, Inc., Transit Paving, Inc., or Municipal Paving, Inc., within the meaning of subsection (g) of section 685 of the Tax Law.

B. That the petitions of Edward G. Ruch are granted and the Notices of Deficiency herein enumerated are cancelled.

DATED: Albany, New York

OCT 31 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER