

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Paul Sciandra :

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 Year 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 28th day of November, 1980, he served the within notice of Decision by certified mail upon Paul Sciandra, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

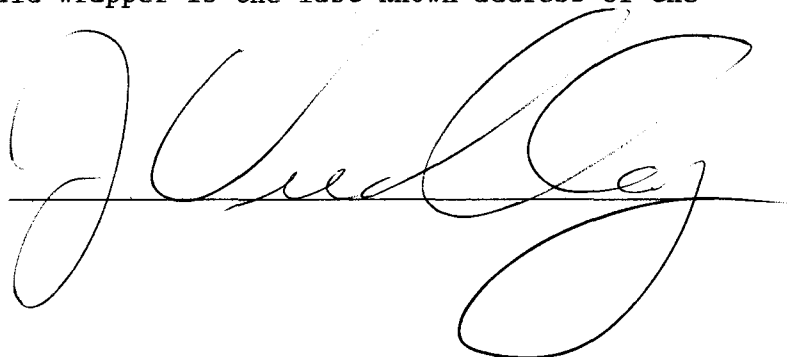
Paul Sciandra
236 Oakwood Rd.
Williamsville, NY 14221

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
28th day of November, 1980.

Deborah A Bank



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

November 28, 1980

Paul Sciandra
236 Oakwood Rd.
Williamsville, NY 14221

Dear Mr. Sciandra:

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 :

PAUL SCIANDRA :

DECISION

for Redetermination of a Deficiency or :
for Refund of Personal Income Tax under :
Article 22 of the Tax Law for the Year :
1973.

Petitioner, Paul Sciandra, 236 Oakwood Road, Williamsville, New York 14221, filed a petition for redetermination of a deficiency or for refund of personal income taxes under Article 22 of the Tax Law for the year 1973 (File No. 15780).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, Genesee Building, One West Genesee Street, Buffalo, New York, on July 10, 1980 at 2:45 P.M. Petitioner, Paul Sciandra, appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (Patricia L. Brumbaugh, Esq., of counsel).

ISSUE

Whether the balance of withholding tax due from Four Seasons Travel Service, Inc. and Clark Sciandra Associates was paid and, if unpaid, whether petitioner be held liable for a penalty equal to the amounts of unpaid withholding taxes due from said corporations.

FINDINGS OF FACT

1. On July 29, 1974, the Income Tax Bureau alleged that Four Seasons Travel Service, Inc. failed to remit personal income taxes withheld of \$138.40 for the periods February 1, 1973 through February 28, 1973 and April 1, 1973 through April 30, 1973.

2. On July 29, 1974, the Income Tax Bureau alleged that Clark Sciandra Associates, Inc. failed to remit personal income taxes withheld of \$292.50 for the periods March 1, 1973 through March 31, 1973 and April 1, 1973 through April 30, 1973.

3. On July 29, 1974, the Income Tax Bureau issued two notices of deficiency along with explanatory statements of deficiency, imposing penalties pursuant to section 685(g) of the Tax Law against petitioner, Paul Sciandra, in the amounts of \$138.40 and \$292.50 for Four Seasons Travel Service, Inc. and Clark Sciandra Associates, Inc., respectively.

4. Petitioner was the vice-president of both corporations. Petitioner does not deny that he was not under a duty to collect, truthfully account for, and pay over personal income taxes withheld from the employees of both corporations during the year 1973.

5. Petitioner contended that prior to the notices of deficiency, he gave all his records to an Income Tax Bureau employee. That the records were never returned and that these records would prove that the taxes had been paid.

6. Petitioner further contended that the Bureau originally held that a greater amount was owed and that he was fortunate enough to find some duplicate records which proved that part of it had been paid. He argued that since he had been able to prove some payments and knowing the amount in question was also paid, he requests that claim for taxes due for 1973 be cancelled.

7. On January 19, 1979, the Audit Division, in a memorandum, reduced the liability of Clark Sciandra Associates, Inc. from \$292.50 to \$88.20, based on evidence presented by the petitioner.

CONCLUSIONS OF LAW

A. That petitioner, Paul Sciandra, was a person under a duty to collect, truthfully account for and pay over personal income taxes withheld from the employees of Four Seasons Travel Service, Inc. and Clark Sciandra Associates, Inc. during the year 1973 and is, therefore, subject to the penalty, in accordance with the meaning and intent of sections 685(g) and 685(n) of the Tax Law.

B. That petitioner has failed to sustain the burden of proof, as required by section 689(e) of the Tax Law, in establishing that the amounts still at issue and owed by both corporations were paid. Even if it were to be conceded that the now Audit Division did have the records which they never returned, it would not relieve petitioner from proving the taxes were paid.

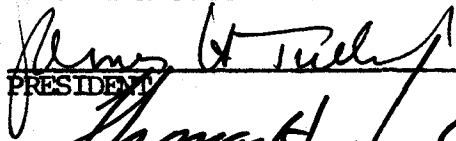
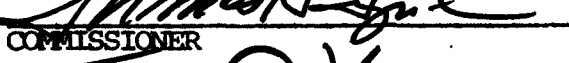

C. That the Audit Division is hereby directed to modify the Notice of Deficiency dated July 29, 1974 issued with regards to Clark Sciandra Associates, Inc., in accordance with Finding of Fact "7".

D. That the petition of Paul Sciandra is granted to the extent provided in Conclusion of Law "C", supra, and that said petition is in all other respects is denied.

DATED: Albany, New York

NOV 28 1980

STATE TAX COMMISSION


PRESIDENT

COMMISSIONER

COMMISSIONER