

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition :  
of  
Robert H. Smart, Sr. :  
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 1969. :

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 11th day of January, 1980, he served the within notice of Decision by certified mail upon Robert H. Smart, Sr., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

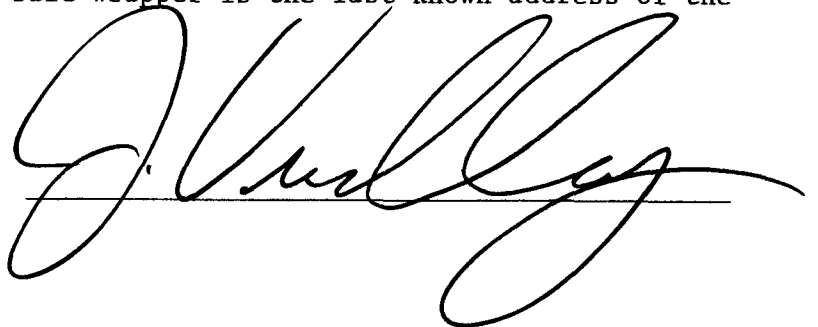
Robert H. Smart, Sr.  
RD #1 Warners Rd.  
Warners, NY 13164

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  
11th day of January, 1980.

Joanne Knapp



STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

Robert H. Smart, Sr.

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 1969. :

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 11th day of January, 1980, he served the within notice of Decision by certified mail upon Harold T. Limpert 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. Harold T. Limpert  
208 Loew Bldg.  
Syracuse, NY 13202

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  
11th day of January, 1980.

Joanne Knapp

J. Vredenburg

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

January 11, 1980

Robert H. Smart, Sr.  
RD #1 Warners Rd.  
Warners, NY 13164

Dear Mr. Smart:

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  
Harold T. Limpert  
208 Loew Bldg.  
Syracuse, NY 13202  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
ROBERT H. SMART, SR.	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article	:	
22 of the Tax Law for the Year 1969.	:	

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Petitioner, Robert H. Smart, Sr., RD #1, Warners Road, Warners, New York 13164, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1969 (File No. 14258).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, 333 East Washington Street, Syracuse, New York, on May 21, 1979 at 1:15 P.M. Petitioner appeared with Harold T. Limpert, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Kathy L. Sanderson, Esq., of counsel).

#### ISSUE

Whether petitioner was liable for the penalty asserted against him (in accordance with section 685(g) of the Tax Law), with respect to unpaid New York State withholding taxes due from Suburban Office Products, Inc. for 1969.

#### FINDINGS OF FACT

1. Suburban Office Products, Inc. failed to pay over to the Income Tax Bureau \$968.70 of New York State personal income taxes withheld from wages and salaries paid to its employees during 1969.

2. On February 22, 1971, the Income Tax Bureau issued a Statement of Deficiency against petitioner, Robert H. Smart, Sr., imposing a penalty equal to the amount of New York State withholding taxes due from Suburban Office Products, Inc. for 1969. This was done on the grounds that he was a person required to collect, truthfully account for and pay over said taxes and that he willfully failed to do so. On February 22, 1971, the Income Tax Bureau issued a Notice of Deficiency for \$968.70 against petitioner.

3. Petitioner was not a shareholder, officer or an employee of Suburban Office Products, Inc.

4. The petitioner was a full time employee of the Town of Camillus.

5. The Income Tax Bureau offered no substantiation that petitioner was a responsible officer.

CONCLUSIONS OF LAW

A. That the petitioner was not a responsible person under a duty to collect, truthfully account for and pay over New York State withholding taxes due from Suburban Office Products, Inc. for 1969 within the meaning and intent of section 685(g) and 685(n) of the Tax Law.

B. That the petition of Robert H. Smart, Sr. is granted and the Notice of Deficiency issued February 22, 1971 is cancelled.

DATED: Albany, New York

**JAN 11 1980**

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER