

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition  
of

George Tassone

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 1974. :

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 18th day of July, 1980, he served the within notice of Decision by certified mail upon George Tassone, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

George Tassone  
7414 Ave. W.  
Brooklyn, NY 11234

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  
18th day of July, 1980.

Deborah A. Bank



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

July 18, 1980

George Tassone  
7414 Ave. W.  
Brooklyn, NY 11234

Dear Mr. Tassone:

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

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In the Matter of the Petition	:	
	:	
of	:	
	:	
GEORGE TASSONE	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Year	:	
1974.	:	

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Petitioner, George Tassone, 7414 Avenue W, Brooklyn, New York 11234, 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 1974 (File No. 16346).

A formal hearing was commenced before Edward L. Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on April 10, 1978 at 9:40 A.M. Petitioner, George Tassone, appeared pro se. The Audit Division appeared by Peter Crotty, Esq. (Irwin Levy, Esq., of counsel). The hearing officer continued the hearing to enable said petitioner to obtain adequate representation.

The formal hearing was continued and concluded before Frank A. Romano, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 19, 1978 at 3:40 P.M. Petitioner, George Tassone, again appeared pro se, having made no effort to secure representation. The Audit Division appeared by Peter Crotty, Esq. (Irwin Levy, Esq., of counsel).

#### ISSUE

Whether petitioner, George Tassone, is a person required to collect, truthfully account for and pay over the withholding taxes of the employees of Atreo Manufacturing Company, Inc. within the meaning and intent of section 685(n) of the Tax Law for the year 1974 and, if so required, whether said

petitioner willfully failed to collect, truthfully account for and pay over the withholding taxes of said corporation within the meaning and intent of section 685(g) of the Tax Law.

FINDINGS OF FACT

1. Atreo Manufacturing Company, Inc. (hereinafter sometimes called "Atreo") failed to pay over to the New York State Income Tax Bureau personal income taxes withheld from Atreo's employees for the period April 1, 1974 to September 30, 1974, computed as follows:

<u>WITHHOLDING TAX PERIOD (1974)</u>	<u>AMOUNT</u>
April 1 to April 15	\$ 435.23
April 16 to April 30	1,208.23
May 1 to May 15	1,339.63
May 16 to May 31	1,680.27
June 1 to June 15	956.60
June 16 to June 30	1,567.68
July 1 to July 15	1,027.17
July 16 to July 31	1,252.89
August 1 to August 15	680.67
August 16 to August 31	728.94
September 1 to September 15	761.08
September 16 to September 30	948.38
 TOTAL AMOUNT DUE	 \$12,586.77

2. On June 28, 1976, the Audit Division issued a Statement of Deficiency and a Notice of Deficiency against petitioner, George Tassone, imposing a penalty equal to the amount of New York State withholding taxes due from Atreo for the aforesaid period on the grounds that said petitioner was a person required to collect, truthfully account for and pay over said taxes and that he willfully failed to do so.

3. On or about September 2, 1976, petitioner, George Tassone, filed a petition for redetermination of deficiency or for refund of personal income tax under Article 22 of the Tax Law for 1974.

4. Atreo was incorporated in the State of New York about 35 years ago and ceased doing business in 1975, during which time Atreo was in the business of constructing, installing and maintaining swimming pools.

5. During the period in question, petitioner, George Tassone, and one Frank Mangano (not a party to this proceeding) respectively owned 20 percent and 80 percent of the shares of stock of Atreo. Said petitioner was president of Atreo and, notwithstanding his unsupported claim that he resigned in September, 1974, he (together with Mangano and Elliot Goldberg, the comptroller, also not a party to this proceeding), had authorization to sign checks throughout the period in question and, in fact, did so.

6. During the period in question, the business of Atreo was conducted at 168 39th Street, Brooklyn, New York, at which location the comptroller, Elliot Goldberg, had his office. While petitioner, George Tassone, may not have actively prepared the books and records of Atreo for the period in question, he had access to them at all times. Atreo's financial books and records were kept and maintained at that location and, in the performance of his duties (for which he received a salary), said petitioner was in Atreo's office frequently (3 or 4 times weekly). The credible evidence leads to the conclusion that said petitioner knew, or should have known, of the financial situation of Atreo, including the tax liability which is the subject of the instant proceeding.

#### CONCLUSIONS OF LAW

A. That petitioner, George Tassone, knew or should have known that Atreo Manufacturing Company, Inc. had failed to pay to New York State the taxes withheld by Atreo for the period April 1, 1974 to September 20, 1974, both inclusive, which taxes constituted trust funds pursuant to section 675 of the Tax Law.

B. That petitioner, George Tassone, was a person required to collect, truthfully account for and pay over the withholding taxes of the employees of Atreo Manufacturing Company, Inc. on behalf of said employer, within the meaning and intent of section 685(n) of the Tax Law.

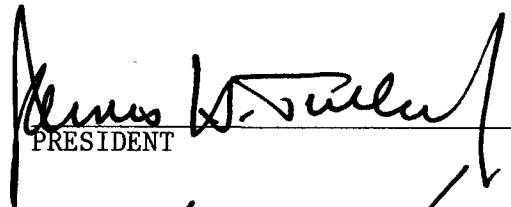
C. That petitioner, George Tassone, willfully failed to collect, truthfully account for and pay over the taxes withheld by Atreo Manufacturing Company, Inc. during the period April 1, 1974 to September 30, 1974, both inclusive, in the amount of \$12,586.77 within the meaning and intent of section 685(g) of the Tax Law. Matter of Thomas Levin v. Gallman, 42 N.Y.2d 32, 396 N.Y.S.2d 623 (1977).

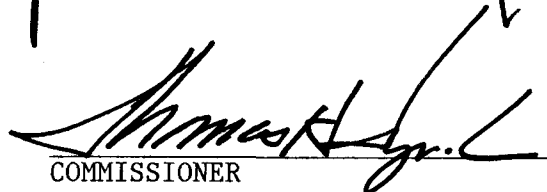
D. That the petition of George Tassone is hereby denied and the Notice of Deficiency issued on June 28, 1976 is sustained.

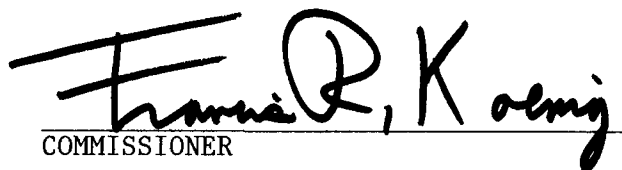
DATED: Albany, New York

STATE TAX COMMISSION

JUL 18 1980

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER