

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
George T. White, Jr. :

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

George T. White, Jr.
115 Parkhurst Dr.
Spencerport, NY 14559

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 January, 1980.

Joanne Knapp

J. Vredenburg

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

January 18, 1980

George T. White, Jr.
115 Parkhurst Dr.
Spencerport, NY 14559

Dear Mr. White:

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	:	
	:	
GEORGE T. WHITE, JR.	:	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, George T. White, Jr., 115 Parkhurst Drive, Spencerport, New York 14559, 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 1973 (File No. 14020).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, One Marine Midland Plaza, Room 1300, Rochester, New York, on July 18, 1979 at 9:15 A.M. Petitioner appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq. (Kathy Sanderson, Esq., of counsel).

ISSUE

Whether petitioner was a person required to collect, truthfully account for and pay over to New York State, income tax withheld from the wages of employees of ABCO Tire Service, Inc. during 1973.

FINDINGS OF FACT

1. ABCO Tire Service, Inc. failed to pay New York State personal income tax withheld from the wages of that company's employees in the amount of \$504.11 for 1973.

2. On September 29, 1975, the Income Tax Bureau issued a Notice of Deficiency and a Statement of Deficiency against petitioner, George T. White, Jr., asserting a penalty equal to the amount of unpaid New York State withholding

tax due from ABCO Tire Service, Inc. for 1973.

3. Petitioner was the attorney who prepared incorporation papers for ABCO Tire Service, Inc. in November 1970. Petitioner, along with John Lawlor and Henry Ochenrider, were the three incorporating officers. Petitioner was relieved of his office at the first stockholders meeting shortly after ABCO Tire Service, Inc.'s incorporation.

4. Petitioner was not authorized to sign checks. He had no part in determining which creditors would be paid and which would not. He was not permitted to hire or fire employees. He was not a stockholder or employee of the corporation. He did not prepare or sign tax returns and did not have control or possession of the books and records of the corporation. During the period at issue, petitioner's only connection with ABCO Tire Service, Inc. was that of an attorney-client relationship.

5. No indication was given as to the reason petitioner was named as a responsible officer.

CONCLUSIONS OF LAW

A. That petitioner, George T. White, Jr., was not a person under a duty to perform the task of collecting, truthfully accounting for and paying over the withholding taxes deducted from the wages of employees of ABCO Tire Service, Inc. during 1973 in accordance with the meaning and intent of section 685(n) of the Tax Law.

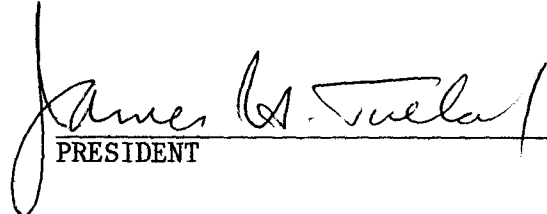
B. That petitioner did not willfully fail or cause ABCO Tire Service, Inc. to willfully fail to collect, truthfully account for and pay over to New York State withholding taxes due from said corporation for the aforesaid year. A penalty equal to the total amount of unpaid withholding taxes was improperly asserted against petitioner in accordance with the meaning and intent of section 685(g) of the Tax Law.

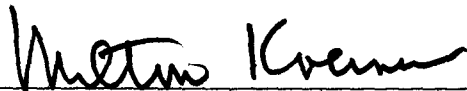
C. That the petition of George T. White, Jr. is granted and the Notice of Deficiency issued September 29, 1975 is cancelled.


DATED: Albany, New York

STATE TAX COMMISSION

JAN 18 1980


PRESIDENT


COMMISSIONER


COMMISSIONER