

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Salvatore Azzaretto :

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 31st day of July, 1981, he served the within notice of Corrected Decision by certified mail upon Salvatore Azzaretto, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Salvatore Azzaretto
43-56 170 Street
Flushing, NY 11358

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 July, 1981.

Ernest A. Haglund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Salvatore Azzaretto :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
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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 31st day of July, 1981, he served the within notice of Corrected Decision by certified mail upon Richard B. Sherman the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Richard B. Sherman
233 Broadway, Suite 916
New York, NY 10007

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 July, 1981.

Annunzio P. Hagelmann

J. Vredenburg

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

July 31, 1981

Salvatore Azzaretto
43-56 170 Street
Flushing, NY 11358

Dear Mr. Azzaretto:

Please take notice of the Corrected 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
Richard B. Sherman
233 Broadway, Suite 916
New York, NY 10007
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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

Petitioner, Salvatore Azzaretto, 43-56 170th Street, Flushing, New York 11358, 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. 24567).

A small claims hearing was held before William Valcarcel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 7, 1980 at 9:15 A.M. Petitioner appeared with Richard B. Sherman, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Aliza Schwadron, Esq., of counsel).

ISSUE

Whether petitioner, Salvatore Azzaretto, is subject to a penalty under section 685(g) of the Tax Law, as a person who willfully failed to collect, truthfully account for and pay over withholding taxes.

FINDINGS OF FACT

1. Rez Foods, Inc. (the corporation) withheld from its employees New York State personal income taxes of \$1,334.40 during the period May 1, 1974 through December 31, 1974 which was not remitted to the Department of Taxation and Finance. The corporation was a food retailer conducting business under a franchise and trade name of "Pioneer" Supermarket.

2. On November 28, 1977, the Audit Division issued a Notice of Deficiency for \$1,334.40, along with an explanatory statement of deficiency, on which a penalty pursuant to section 685(g) of the Tax Law was imposed against petitioner as a person who willfully failed to collect, truthfully account for and pay over withholding taxes.

3. On April 14, 1978, the Audit Division issued a Notice of Demand for Payment of Income Tax Due (the assessment) for \$1,,334.40. Subsequently, petitioner, Salvatore Azzaretto, paid \$1,300.00 of the assessment and requested a refund. On December 18, 1978, a notice of disallowance denying petitioner's refund claim was issued.

4. Petitioner, Salvatore Azzaretto, was president of Rez Foods, Inc., with approximately fifty-percent ownership of its stock. Petitioner contended that his primary responsibility with the corporation was operating and managing the meat department, and that two other corporate officers had full responsibility in the financial and operational functions of the corporation. Petitioner also contended that he had the authority to sign checks, but that he did not recall ever exercising such authority.

5. Petitioner testified that he was not aware that taxes were not being paid, or that the corporation was experiencing financial difficulties until "a couple of weeks" prior to it ceasing business operations in August 1974.

6. Petitioner did not have or recall the contents of documents signed by him in creation of the corporation, the purchase of 50 percent of its stock, or the formulation of authority and responsibility within the corporate structure. No documentary evidence was submitted to support petitioner's contentions.

CONCLUSIONS OF LAW

A. That petitioner, Salvatore Azzaretto, was a person as defined by section 685(n) of the Tax Law, who willfully failed to collect and pay over

personal income taxes withheld by Rez Foods, Inc. during the year 1974.

B. That petitioner, Salvatore Azzaretto, is subject to a penalty in accordance with the meaning and intent of section 685(g) of the Tax Law.


C. That the petition of Salvatore Azzaretto is denied, and the notice of disallowance of December 18, 1978 is sustained.

DATED: Albany, New York

JUL 31 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER