

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Robert C. Burger :

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 1975. :

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 13th day of March, 1981, he served the within notice of Decision by certified mail upon Robert C. Burger, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Robert C. Burger
87 Summit Ave.
Sea Cliff, NY

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
13th day of March, 1981.

Cornie A. Hagelund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

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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 1975. :

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 13th day of March, 1981, he served the within notice of Decision by certified mail upon Steven I. Tolman 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. Steven I. Tolman
McDonough, Schneider, Marcus, Cohn & Tretter
866 Third Ave.
New York, NY 10022

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
13th day of March, 1981.

Cornelia A. Hagelund

J. Vredenburg

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

March 13, 1981

Robert C. Burger
87 Summit Ave.
Sea Cliff, NY

Dear Mr. Burger:

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
Steven I. Tolman
McDonough, Schneider, Marcus, Cohn & Tretter
866 Third Ave.
New York, NY 10022
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
ROBERT C. BURGER	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the year 1975.	:	

Petitioner, Robert C. Burger, 87 Summit Avenue, Sea Cliff, New York, 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 1975 (File No. 21460).

A formal hearing was held before Herbert Carr, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 27, 1979 at 10:45 A.M. Petitioner appeared by McDonough, Schneider, Marcus, Cohn & Tretter, P.C. (Steven I. Tolman, Esq., of counsel). The Audit Division appeared by Peter Crotty, Esq. (Patricia L. Brumbaugh, Esq., of counsel).

ISSUE

Whether petitioner was a person required to collect, truthfully account for and pay over withholding tax with respect to F.C. Industries, Inc., and willfully failed to do so.

FINDINGS OF FACT

1. By Notice of Deficiency dated November 28, 1977, the Department of Taxation and Finance asserted a penalty of \$6,671.75 against petitioner, Robert C. Burger, pursuant to Section 685(g) of the Tax Law predicated upon the failure of F.C. Industries, Inc. ("the Corporation") to remit withholding tax in the aforesaid amount during the period April 1, 1975 through August 31, 1975.

2. The Corporation was engaged in business as a contractor employing six people in the office and sales force and between twenty-five and thirty people as mechanics during the tax period in question, until September 3, 1975 when an assignment for the benefit of creditors was executed, and the Corporation formally ceased operations.

3. Robert C. Burger was employed by the Corporation from May, 1972 to November, 1973 as its vice-president. Notwithstanding this title, Burger had no managerial control over corporate policy, had no authority to sign checks or make financial decisions, had no financial investment or stock ownership in the Corporation and attended no meetings of the Board of Directors.

4. Burger's function in the Corporation was as a promotional salesperson. His duties did not include any acts relating to the collection and payment of taxes.

5. After November, 1973, Burger had no business or financial contacts with the Corporation.

6. Mr. Frank Curatola was the founder and president of F.C. Industries, Inc., and exercised general managerial control over the Corporation. Mr. Curatola, by formal stipulation, admitted personal liability for the tax at issue herein.

CONCLUSIONS OF LAW

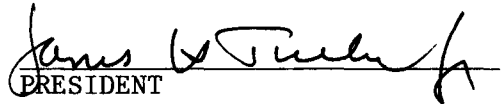
A. That pursuant to section 685(g) of the Tax Law, Robert C. Burger was not a person required to collect, truthfully account for and pay over the withholding tax at issue with respect to F.C. Industries, Inc., since Burger was not employed by and had no financial or other connection with the Corporation during the tax period.

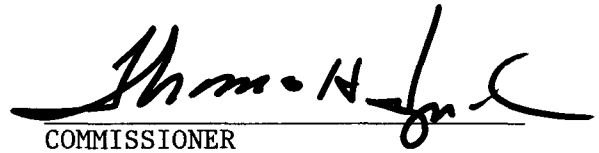
B. That the petition of Robert C. Burger is granted and the Notice of Deficiency is cancelled.

DATED: Albany, New York

MAR 13 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER