

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Joseph M. Cali :
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 6th day of November, 1981, he served the within notice of Decision by certified mail upon Joseph M. Cali, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

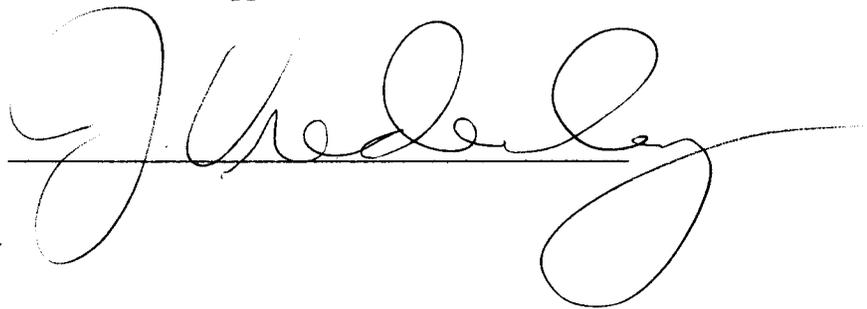
Joseph M. Cali
67 Seaview Ave.
Staten Island, NY 10304

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
6th day of November, 1981.





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

November 6, 1981

Joseph M. Cali
67 Seaview Ave.
Staten Island, NY 10304

Dear Mr. Cali:

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
JOSEPH M. CALI
for Redetermination of a Deficiency or for
Refund of Personal Income Tax under Article
22 of the Tax Law for the Year 1974.

DECISION

Petitioner, Joseph M. Cali, 67 Seaview Avenue, Staten Island, New York 10304, 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. 24150).

A small claims hearing was held before Allen Caplowaith, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 7, 1981 at 10:45 A.M. Petitioner appeared with Joann Cali. The Audit Division appeared by Ralph J. Vecchio, Esq. (Kevin Cahill, Esq., of counsel).

ISSUE

Whether petitioner is subject to a penalty pursuant to section 685(g) of the Tax Law as a person who willfully failed to collect, truthfully account for and pay over the New York State withholding taxes due from J.J. Meats, Inc.

FINDINGS OF FACT

1. J.J. Meats, Inc., 1470 86th Street, Brooklyn, New York, failed to pay over the New York State personal income taxes withheld from the wages of its employees for the period January 1, 1974 to December 31, 1974.

2. On July 31, 1978 the Audit Division issued a Statement of Deficiency in conjunction with a Notice of Deficiency against petitioner, Joseph M. Cali,

wherein a penalty was asserted pursuant to section 685(g) of the Tax law for \$834.50, such amount being equal to the New York State withholding taxes due from J.J. Meats, Inc. Said penalty was asserted on the ground that petitioner was a person required to collect, truthfully account for and pay over the withholding taxes, and that he willfully failed to do so.

3. Petitioner, Joseph M. Cali, contended that during 1974 he was President of J.J. Meats, Inc. until the latter part of June, at which time he left the business and ceased all involvement with same. Accordingly, he did not contest the penalty asserted against him relative to the period January 1, 1974 through June 30, 1974.

4. The file contains documentation in support of petitioner's claim that he was not involved with J.J. Meats, Inc. for the period July 1, 1974 through December 31, 1974, as follows:

- a. Employer's quarterly Federal tax returns of J.J. Meats, Inc. for 1974 indicating that petitioner was an employee only through June 1974.
- b. Petitioner's U.S. individual income tax return whereon he listed his occupation as "butcher/unemployed most of year".
- c. An affidavit from Belfiore Meats, Inc. stating that from mid-August 1974 through December 31, 1974, petitioner was employed by said company on a part-time basis.
- d. A Wage and Tax Statement for 1974 from Belfiore Meats., and
- e. A reconciliation of personal income tax withheld for 1974 from J.J. Meats, Inc. whereon another party signed as president.

5. During 1974 J.J. Meats, Inc. withheld \$581.00 of New York State personal income taxes from its employees for the period January 1, 1974 through June 30, 1974, and \$253.50 for the period July 1, 1974 through December 31, 1974.

CONCLUSIONS OF LAW

A. That for the period January 1, 1974 through June 30, 1974, petitioner was a person who was required to collect, truthfully account for and pay over the New York State personal income taxes withheld from the employees of J.J. Meats, Inc. Accordingly, he is liable for a penalty equal to such tax for said period pursuant to section 685(g) of the Tax law.

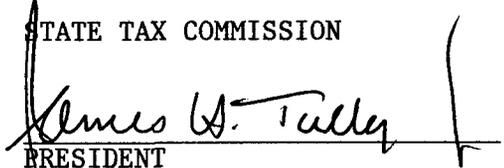
B. That for the period July 1, 1974 through December 31, 1974, petitioner was not a person who was required to collect, truthfully account for and pay over the New York State personal income taxes withheld from the employees of J.J. Meats, Inc. Accordingly, the penalty asserted pursuant to section 685(g) of the Tax Law for such period is hereby abated.

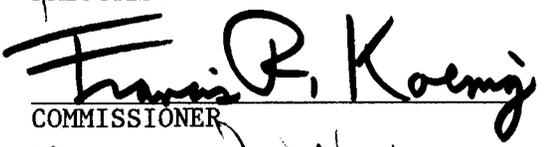
C. That the petition of Joseph M. Cali is granted to the extent provided in Conclusion of Law "B" supra, and except as so stated, said petition is, in all other respects, denied.

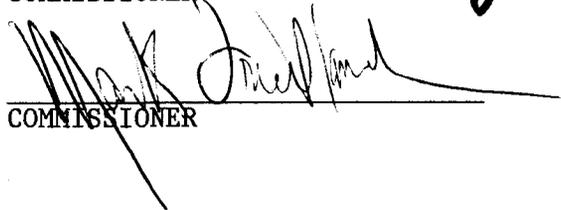
D. That the Audit Division is hereby directed to modify the Notice of Deficiency dated July 31, 1978 to be consistent with the decision rendered herein.

DATED: Albany, New York
NOV 06 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER