

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Lawrence Cihanek :
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. :

AFFIDAVIT OF MAILING

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 25th day of September, 1981, he served the within notice of Decision by certified mail upon Lawrence Cihanek, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Lawrence Cihanek
Dixon Rd.
Carmel, NY 10512

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
25th day of September, 1981.

Arnie R. Haglund

Jay Vredenburg

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

September 25, 1981

Lawrence Cihanek
Dixon Rd.
Carmel, NY 10512

Dear Mr. Cihanek:

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
LAWRENCE CIHANEK
for Redetermination of a Deficiency or Refund
of Personal Income Tax under Article 22 of
the Tax Law for the Year 1973.

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DECISION

Petitioner, Lawrence Cihanek, Dixon Road, Carmel, New York 10512, 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. 21518).

A formal hearing was held before Arthur Bray, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on March 24, 1981 at 1:30 P.M. Petitioner appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (Angelo Scopellito, Esq., of counsel).

ISSUE

Whether petitioner is liable for the penalty asserted against him pursuant to section 685(g) of the Tax Law with respect to New York State withholding taxes due from Nova Plastic & Mold Corp. for the year 1973.

FINDINGS OF FACT

1. Nova Plastic & Mold Corp. ("Nova") failed to pay New York State personal income tax withheld from the wages of its employees in the amount of \$5,155.71 for the calendar year 1973.

2. On November 28, 1977, the Audit Division issued a Notice of Deficiency and a Statement of Deficiency against petitioner asserting a penalty equal to

the amount of the unpaid New York State withholding tax due from Nova for the year 1973.

3. During the year 1973, petitioner was a salesman for Nova with the title of vice-president. Petitioner's duties included finding customers, determining what to try to sell them, and having an artist design the product. Michael Spieth, the president of Nova would then determine what the product would cost whereupon petitioner would return to the customer and try to make a sale.

4. Nova had an office in New York City and a plant in Long Island. The president of Nova, Mr. Michael Spieth, would travel back and forth between the two locations. Mr. Spieth authorized an individual at the plant to sign checks. Petitioner was authorized to sign checks for the payroll and other miscellaneous items at the New York City office in Mr. Spieth's absence. Petitioner would only sign checks at Mr. Spieth's direction. On occasion, the checks were prepared by Mr. Spieth's secretary.

5. Although schedule E of Nova's New York corporation franchise tax report for the fiscal year ended September 30, 1972 lists petitioner as the owner of 30 percent of the common stock, petitioner testified that he did not own any stock in Nova and that he never attended any meetings of Nova's board of directors. It is hereby found that petitioner's testimony was credible and that petitioner did not own any stock in Nova.

6. Petitioner was at Nova's office from fifteen to twenty hours a week. Most of petitioner's time was expended in the field, listening to and attending to customers' needs.

7. Petitioner did not have access to Nova's books and records.

8. Petitioner was paid a weekly draw against a commission based on sales. Petitioner never received any dividends.

9. In the industry in which Nova was operating an individual is given the title of vice-president when that individual obtains sales of a certain level. Petitioner has been a vice-president of four companies including Nova.

10. During the period in question two other salesmen at Nova utilized the title of vice-president on their cards.

11. Petitioner did not have the right to hire and fire employees. He did not supervise the work of other employees although he did act as an adviser to other employees on an informal basis.

CONCLUSIONS OF LAW

A. That petitioner, Lawrence Cihanek, although an officer of Nova Plastic & Mold Corp., was not a person required to collect, truthfully account for, and pay over withholding taxes within the meaning of sections 685(g) and 685(n) of the Tax Law. Moreover, petitioner did not willfully attempt to evade or defeat the tax or the payment thereof.

B. That the penalty equal to the total amount of withholding tax not paid over, in accordance with section 685(g) of the Tax Law, was improperly asserted against petitioner.

C. That the petition of Lawrence Cihanek is granted and the Notice of Deficiency issued against him November 28, 1977 is cancelled.

DATED: Albany, New York

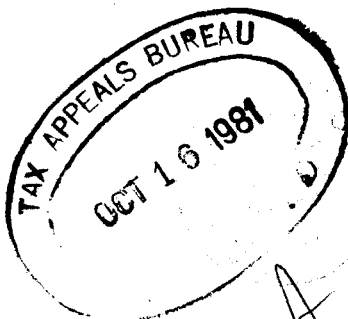
SEP 25 1981

STATE TAX COMMISSION

James G. Sullivan
PRESIDENT

Francis R. Koenig
COMMISSIONER

Mark J. Sullivan
COMMISSIONER



B A sent

CLAIM CHECK NO.

69775

☐ HOLD

DATE

9.28
CA15

1ST NOTICE

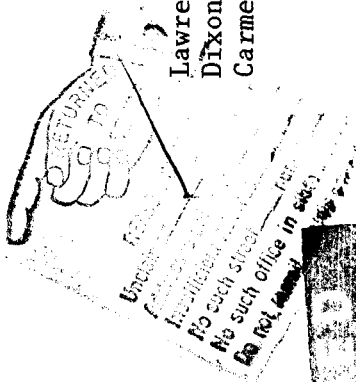
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10-381

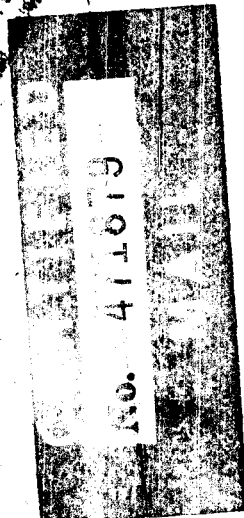
RETURN

Detached from
PS Form 3849-A
Feb. 1978

Lawrence Cihanek
Dixon Rd.
Carmel, NY 10512



TA 26 (9-79)
STATE OF NEW YORK
State Tax Commission
TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N. Y. 12227



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

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DATED: Albany, New York

SEP 25 1981

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