

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
Joseph Feola

:

:

: 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 Years :
1975, 1976

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 5th day of June, 1981, he served the within notice of Decision by certified mail upon Joseph Feola, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Joseph Feola
8 Lake Dr.
Westwood, NJ 07675

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
5th day of June, 1981.

Annie A. Hagelind

J. Vredenburg

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

June 5, 1981

Joseph Feola
8 Lake Dr.
Westwood, NJ 07675

Dear Mr. Feola:

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 FEOLA	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Years	:	
1975 and 1976.	:	

Petitioner, Joseph Feola, 8 Lake Drive, Westwood, New Jersey 07675, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1975 and 1976 (File No. 18683).

A small claims hearing was held before Samuel Levy, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 26, 1981 at 1:15 P.M. Petitioner appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (Abraham Schwartz, Esq., of counsel).

ISSUE

Whether petitioner was a person required to collect, truthfully account for and pay over New York State withholding tax due and owing from Wool Bros. Corporation for 1975 and 1976.

FINDINGS OF FACT

1. On March 28, 1977, the Audit Division issued a Notice of Deficiency and Statement of Deficiency against petitioner, Joseph Feola, asserting a penalty against him equal to the amount of unpaid New York withholding taxes due and owing from Wool Bros. Corporation (hereinafter corporation) in the

amount of \$1,093.10 for 1975 and 1976. The penalty was issued on the ground that petitioner was a person required to collect, truthfully account for and pay over the taxes at issue, and that he willfully failed to do so.

2. Wool Bros. Corp. was engaged in the sale of major home appliances. It terminated operations sometime after January of 1976 when it went into bankruptcy.

3. Petitioner held the offices of vice president and secretary of the corporation, and held a fifty percent (50%) interest in its outstanding stock.

4. Petitioner was an authorized signatory of corporate checks and on several occasions, prepared checks for payment of payroll and purchases.

5. Petitioner had a heart attack sometime in November of 1975. Prior to his heart attack, petitioner had knowledge that the corporation was delinquent in payment of rent and other liabilities.

6. Payroll taxes were prepared by the corporate bookkeeper and outside accountant.

7. At the hearing, petitioner did not deny his responsibility for unpaid taxes at issue. However, he stated that he does not have the funds to pay said liability.

CONCLUSIONS OF LAW

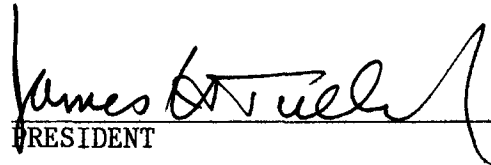
A. That petitioner Joseph Feola was a person required to collect, truthfully account for and pay over New York State income tax withheld by Wool Bros. Corporation in the sum of \$1,093.10 and willfully failed to do so, within the meaning of subdivisions (g) and (n) of section 685 of the Tax Law. Accordingly, petitioner is subject to a penalty equal to said sum under subdivision (g) of section 685 of the Tax Law.


B. That the Notice of Deficiency issued on March 28, 1977 for the years 1975 and 1976 is sustained together with such additional interest as may be lawfully owing.


DATED: Albany, New York

STATE TAX COMMISSION

JUN 5 1981


PRESIDENT


COMMISSIONER


COMMISSIONER