

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of  
Phillip Geraghty :

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 1968 - 1970. :

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 27th day of February, 1981, he served the within notice of Decision by certified mail upon Phillip Geraghty, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Phillip Geraghty  
7 John Jay Place  
Rye, NY 10580

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  
27th day of February, 1981.

Connie A. Hagelund

J. Vredenburg

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :

of

Phillip Geraghty :

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 1968 - 1970. :

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 27th day of February, 1981, he served the within notice of Decision by certified mail upon Archibald A. Patterson the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Esq. Archibald A. Patterson  
300 Madison Ave.  
New York, NY 10017

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  
27th day of February, 1981.

Annex A. Hagelund

J. Vredenburg

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

February 27, 1981

Phillip Geraghty  
7 John Jay Place  
Rye, NY 10580

Dear Mr. Geraghty:

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  
Archibald A. Patterson  
300 Madison Ave.  
New York, NY 10017  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
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of	:	
	:	
PHILLIP GERAGHTY	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Years	:	
1968 through 1970	:	

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Petitioner, Phillip Geraghty, 7 John Jay Place, Rye, New York 10580, 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 1968 through 1970 (File No. 13956).

A formal hearing was held before Edward L. Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on May 19, 1978, and continued before Archibald F. Robertson, Jr. and Julius Braun, Hearing Officers, on November 3, 1978 and January 22, 1979, respectively. Petitioner appeared by Archibald A. Patterson, Esq. The Audit Division appeared by Peter Crotty, Esq. (Irving Atkins and Aliza Schwadron, Esqs., of counsel).

ISSUE

Whether petitioner was a person required to collect, truthfully account for and pay over the withholding taxes due from the Philrob Corporation and Philrob of New York, Inc. for the years 1968 through 1970.

FINDINGS OF FACT

1. On December 27, 1971, the Audit Division issued statements of deficiency and notices of deficiency against petitioner, Phillip Geraghty, imposing penalties equal to the amount of New York State withholding taxes due from Philrob Corporation and Philrob of New York, Inc. for the years 1968, 1969 and

1970. This was done on the grounds that he was a person required to collect, truthfully account for and pay over withholding taxes due for the years 1968 through 1970 from the Philrob Corporation and Philrob of New York, Inc. in the amounts of \$18,955.16 and \$10,486.22 respectively and willfully failed to do so.

2. Phillip Geraghty was president and chief executive officer of the Philrob Corporation and Philrob of New York, Inc. which were engaged in two construction projects as subcontractors for the Turner Construction Company ("Turner") during the periods in issue. The Philrob corporations had some thirty-one employees with net earnings over six thousand dollars for the week ending February 10, 1970. When the Philrob corporations developed financial difficulties, Turner took over some of their financial functions in order to complete the jobs. Turner bought and paid for all materials and also paid the net wages of the Philrob corporations' employees. Checks for the net payrolls were made out to the Philrob corporations which endorsed the payroll checks to Turner's job superintendent who then cashed the checks and paid the workmen in cash. While withholding tax statements were filed by the Philrob corporations, no remittance was made. The tax statements were signed by the office manager.

3. Phillip Geraghty was aided in the business by Robert McArdle, his wife's cousin. McArdle's responsibilities were in booking, accounting and administration. Phillip Geraghty was to supervise on the site production. He determined manpower and material requirements. There was constant communication between the two.

4. The New York State Corporation Franchise Tax Reports, based on the calendar year 1970, for Philrob Corporation and for Philrob of New York, Inc. were signed by Phillip R. Geraghty, President and dated November 15, 1971.

CONCLUSIONS OF LAW

A. That Philrob Corporation and Philrob of New York, Inc. were employers required to deduct withholding taxes due from employees' wages for the years 1968 through 1970, within the meaning and intent of section 671 of the Tax Law.

B. That petitioner Phillip Geraghty knew or should have known, that Philrob Corporation and Philrob of New York, Inc. failed to pay to the Income Tax Bureau the taxes withheld for the years 1968 through 1970 which taxes constitute trust funds pursuant to section 675 of the Tax Law.

C. That petitioner Phillip Geraghty was a person required to collect, truthfully account for and pay over the withholding taxes due from Philrob Corporation and Philrob of New York, Inc., within the meaning and intent of subsections (g) and (n) of section 685 of the Tax Law.

D. That petitioner, Phillip Geraghty, willfully failed to collect, truthfully account for and pay over the taxes withheld by Philrob Corporation and Philrob of New York, Inc. during the years 1968 through 1970, within the meaning and intent of section 685(g) of the Tax Law. [Levin v. Gallman, 42 N.Y.2d 32, 396 N.Y.S.2d 623 (1977)]. Accordingly, petitioner is liable to a penalty equal to said unpaid taxes.


E. That the petition of Phillip Geraghty is denied and the notices of deficiency issued December 27, 1971 are sustained.

DATED: Albany, New York  
FEB 27 1981

STATE TAX COMMISSION

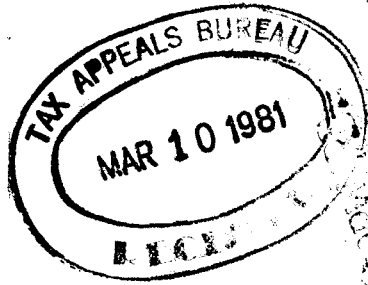
  
PRESIDENT

  
COMMISSIONER

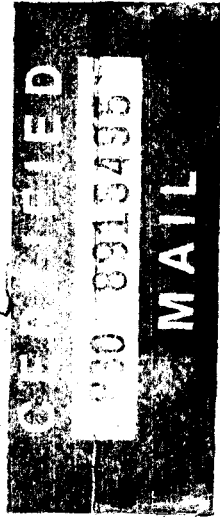
  
COMMISSIONER

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STATE OF NEW YORK  
State Tax Commission  
TAX APPEALS BUREAU  
STATE CAMPUS  
ALBANY, N. Y. 12227



Archibald A. Patterson  
300 Madison Ave.  
New York NY 10017



FORM 302

OSC  
N + 10001  
S + N + 10001

TAX  
Ave

~~Rep. Corp.~~

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

February 27, 1981

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7 John Jay Place  
Rye, NY 10580

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Very truly yours,

STATE TAX COMMISSION

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STATE OF NEW YORK  
STATE TAX COMMISSION

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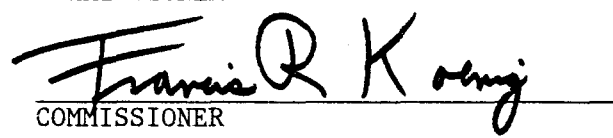
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