

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Theodore Hubbard :  
and Edward Hocker :  
: 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 :  
1972. :

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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 30th day of October, 1981, he served the within notice of Decision by certified mail upon Theodore Hubbard and Edward Hocker the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Theodore Hubbard  
and Edward Hocker  
475 N. Windsor Ave.  
Brightwater, NY 11716

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  
30th day of October, 1981.

*Connie G. Haglund*

*J. Vredenburg*

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

October 30, 1981

Theodore Hubbard  
and Edward Hocker  
475 N. Windsor Ave.  
Brightwater, NY 11716

Gentlemen:

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  
Murray Appleman  
225 Broadway  
New York, NY 10007  
Taxing Bureau's Representative

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Theodore Hubbard :  
and Edward Hocker :  
: 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 :  
1972. :

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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 30th day of October, 1981, he served the within notice of Decision by certified mail upon Murray Appleman the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

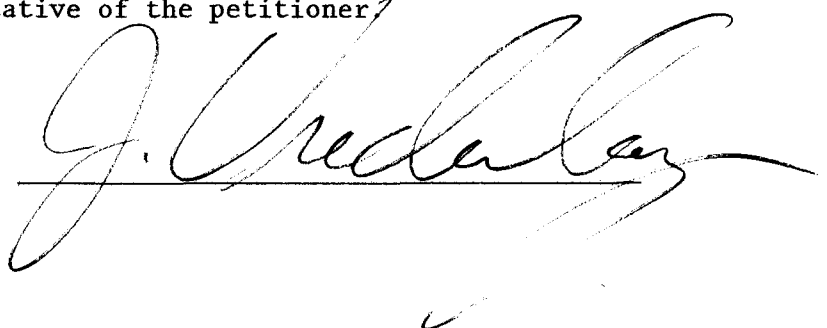
Murray Appleman  
225 Broadway  
New York, NY 10007

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  
30th day of October, 1981.

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A handwritten signature, likely of Jay Vredenburg, is written over a horizontal line. The signature is in cursive and appears to read 'J. Vredenburg'.

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Theodore Hubbard :  
and Edward Hocker :  
: 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 :  
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State of New York  
County of Albany

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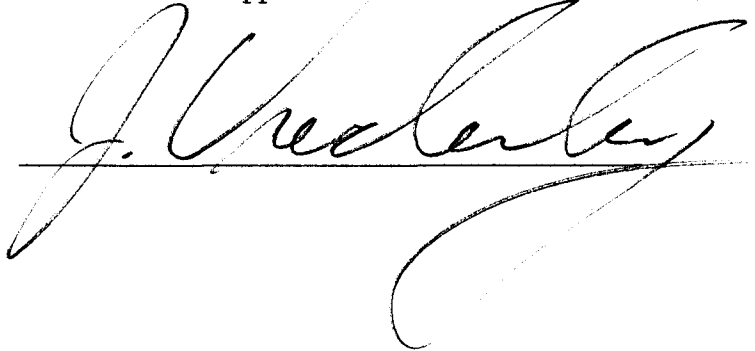
Theodore Hubbard  
and Edward Hocker  
104 N. Center Ave.  
Bayshore, NY 11706

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  
30th day of October, 1981.

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A large, stylized handwritten signature, likely of the deponent Jay Vredenburg, is written over a horizontal line.

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

October 30, 1981

Theodore Hubbard  
and Edward Hocker  
104 N. Center Ave.  
Bayshore, NY 11706

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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

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In the Matter of the Petition	:	
of	:	
THEODORE HUBBARD and EDWARD HOCKER	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1972.	:	

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Petitioners, Theodore Hubbard, 104 North Center Avenue, Bayshore, New York and Edward Hocker, 475 North Windsor Avenue, Brightwater, New York, each 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 1972 (File Nos. 19625 & 19626).

A formal hearing was held before Nigel Wright, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on February 23, 1981 at 2:45 P.M. The petitioners appeared by Murray Appleman, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq., (Patricia L. Brumbaugh, Esq., of counsel).

ISSUE

Whether the petitioners are liable under section 685(g) of the Tax Law, for a penalty equal to the unpaid withholding taxes of Rocke & Johnson, Inc.

FINDINGS OF FACT

1. Notices of deficiency and statements of deficiency were issued on February 28, 1977 to Theodore Hubbard and Edward Hocker for the year 1972. Each was in the amount of \$17,131.00 representing penalties equal to the unpaid withholding taxes due from Rocke & Johnson, Inc. of 330 Motor Parkway, Hauppauge, New York for the period July 1, 1972 through December 31, 1972.

2. Rocke & Johnson, Inc. was formed to engage in heavy construction. Mr. Hubbard and Mr. Hocker were both listed as officers of the corporation and both had power to issue checks on the corporate bank account.

3. Neither Mr. Hubbard nor Mr. Hocker were present to testify at the hearing. Their representative requested an adjournment to enable them to appear. He admitted, however, that they had adequate notice of the hearing.

4. Petitioners have submitted what purports to be a letter from the former president of Rocke & Johnson, Inc., Mr. Ferdinand A. Rocke, stating that Mr. Hubbard and Mr. Hocker "were not active participants in the daily decisions or daily activities of the corporation. They were investors rather than management or decision makers."

CONCLUSIONS OF LAW

A. That petitioners must be held liable for the penalty under section 685(g) of the Tax Law for the unpaid withholding taxes in question. The burden of proving their freedom from liability is on them and they have failed to produce any evidence pertinent to the question. Since they had adequate notice of the hearing, any further adjournment must be denied. The determinations under review are correct and are sustained and the petitions to redetermine the same are denied.

DATED: Albany, New York

OCT 30 1981

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER