

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Pasquale Iammatteo :

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 :
1973.

State of New York
County of Albany

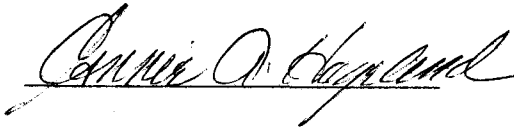
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 31st day of July, 1981, he served the within notice of Decision by certified mail upon Pasquale Iammatteo, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

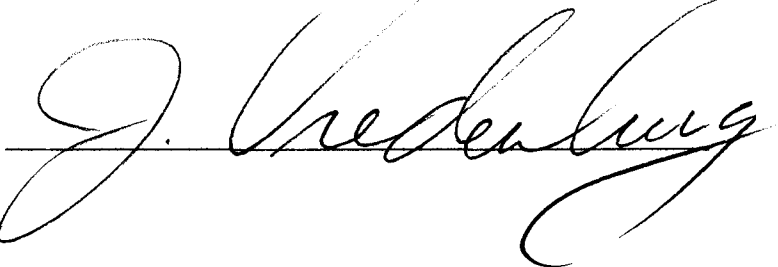
Pasquale Iammatteo
98 Vedder Ave.
Staten Island, NY 10302

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
31st day of July, 1981.


Carrie A. Highland


Jay Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Pasquale Iammatteo :

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 :
1973.

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 31st day of July, 1981, he served the within notice of Decision by certified mail upon Michael Rikon the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Michael Rikon
140 Dover Green
Staten Island, NY 10313

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
31st day of July, 1981.

Conrad A. Haydel

J. Vredenburg

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

July 31, 1981

Pasquale Iammatteo
98 Vedder Ave.
Staten Island, NY 10302

Dear Mr. Iammatteo:

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
Michael Rikon
140 Dover Green
Staten Island, NY 10313
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
PASQUALE IAMMATTEO	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1973.	:	

Petitioner, Pasquale Iammatteo, 98 Vedder Avenue, Staten Island, New York 10302, 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. 15908).

A formal hearing was held before Robert A. Couze, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on November 20, 1980 at 10:15 A.M. Petitioner appeared by Michael Rikon, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq., (William Fox, Esq., of counsel).

ISSUE

Whether petitioner, Pasquale Immatteo was a person required to collect, truthfully account for and pay over withholding taxes due from Palmer Plastics, Inc. for the year 1973.

FINDINGS OF FACT

1. On April 29, 1976, the Audit Division issued a notice of deficiency and statement of deficiency against petitioner in the amount of \$8,048.35 for the tax year 1973. The statement asserted petitioner was a person required to collect, truthfully account for and pay over withholding taxes due from Palmer

Plastics, Inc. for the year 1973 pursuant to the provisions of subsections (g) and (n) of section 685 New York Tax Law.

2. The aforementioned Statement of Deficiency asserted the liability for the withholding period in sums as follows:

<u>WITHHOLDING TAX PERIODS</u>	<u>AMOUNT</u>
April 1 to April 15, 1973	\$1,404.51
May 1 to August 8, 1973	<u>6,643.84</u>
TOTAL DUE	\$8,048.35

3. The corporate employer was Palmer Plastics, Inc., ("Palmer") the address of which was 1072 Avenue D, Brooklyn, New York.

4. Palmer was engaged in the business of manufacturing plastic toys.

5. The controlling interest in Palmer was owned by the Estate of Irving Wildstein. Stephen Wildstein was the co-executor and principal beneficiary of this estate.

6. The estate wished to sell this business.

7. Robert Snyder and Philip Hixon, were the partners of Snyder-Hixon Associates, which was a venture capital partnership.

8. Palmer was not doing well financially and Stephen Wildstein asked Snyder and Hixon about raising money for the company. Snyder and Hixon agreed that they would attempt to raise some money for the company if they could obtain an option to purchase Palmer's stock.

9. Petitioner, Pasquale Iammatteo, was a factory manager with a toy company.

10. Sometime in the spring of 1972, Iammatteo was contacted by Snyder and Hixon and asked if he was interested in an opportunity to participate in the purchase of an existing plastic toy company i.e. Palmer.

11. Iammatteo expressed an interest and shortly thereafter, he along with Snyder-Hixon Associates, Stephen Wildstein and one Edward Nassberg formed Winneco, Inc., ("Winneco") a Delaware corporation (initially called Palmer Industries, Inc.) to effectuate the purchase of Palmer. Snyder and Hixon were partners in Snyder-Hixon Associates.

12. Iammatteo, Snyder-Hixon Associates, Wildstein and Nassberg entered into an agreement dated June 20, 1972, whereby they would purchase stock in Winneco.

13. Winneco's formation capital was as follows:

<u>NAME</u>	<u>NO. SHARES</u>	<u>PURCHASE PRICE</u>
Wildstein	333,333	\$ 3,333.33
Nassberg	166,666	\$ 1,666.66
Iammatteo	166,666	\$ 1,666.64
Snyder-Hixon Associates	333,333	\$25,000.00

14. Winneco was a shell, a holding company set up principally to operate and manage Palmer Plastics, Inc. Under the terms of an agreement, Winneco was to act as consultant to Palmer and had an option to purchase Palmer's stock if certain conditions were met on or before January 1, 1973. In connection with the Stock Purchase Agreement dated June 20, 1972, it was agreed that Palmer would retain Winneco as management consultants for the period from the date of the agreement to the closing date. In this connection, it was agreed that Winneco and its officers would have the power to manage and direct the daily operations of Palmer, including hiring and firing of employees, purchase and sale of materials and goods, etc., to be exercised reasonably in Winneco's judgment as to the best interest of the corporations.

15. None of Palmer's stock was ever purchased by or ever transferred to Winneco. Rather, the stock was endorsed in blank and held by Palmer in escrow pursuant to the contract to purchase.

16. Petitioner's area of responsibility with Winneco and Palmer was manufacturing, purchasing and production and Snyder and Hixon shared the responsibility for the infusion of capital into Winneco, which could be either loaned or advanced to Palmer. Snyder and Hixon were also responsible for Winneco's and Palmer's budgeting, accounting and forecasting.

17. Because of the failure of Snyder-Hixon Associates to come up with the requisite finances for Palmer the contract that Winneco had to purchase Palmer expired on January 1, 1973, however, it was further extended for one additional month.

18. Petitioner did not own any stock in Palmer nor was he an officer of Palmer.

19. Petitioner was given and exercised check writing authority on Palmer's checking account(s). The authority was given by Wildstein and could be revoked at will by him.

20. Petitioner testified that he did not have authority to decide what bills were to be paid by Palmer nor did he have authority to decide what checks were to be drawn. Petitioner testified that he only signed Palmer checks that had the prior approval of Wildstein.

21. Palmer's checkbook was kept in a safe and only Francis Cohen, its bookkeeper and Wildstein had access to it. Petitioner testified had he asked for the checkbook, both the bookkeeper and/or Wildstein would have refused him.

22. Attorneys for the Wildstein Estate objected to the intermingling of Winneco and Palmer and accordingly, it was agreed that all rights to use the

name Winneco and all contracts and all beneficial interests of Winneco would be conveyed to Palmer.

23. The officers of Palmer were Stephen Wildstein, President-Treasurer and Director. Other officers included one Henry Zirin, who was Purchasing Agent, and Wildstein's wife.

24. The officers of Winneco and Palmer were not one and the same. Only Wildstein was an officer of both.

25. Petitioner testified that he never attended Palmer's directors meetings. However, he did attend Winneco's board meetings, wherein Palmer's affairs were discussed for the purpose of ascertaining whether its financial condition could be turned around.

26. On May 2, 1973, there was a meeting of the Board of Directors of Winneco. At that meeting the question was raised of Palmer's unpaid withholding taxes although its bookkeeper, Francis Cohen, had been instructed to make all withholding payments. It was further suggested at this meeting that the stockholders of Winneco forego salaries from Palmer until the latter's withholding taxes were brought up to date. Petitioner said he could not do without any salary as that was his only source of income. Subsequently, petitioner agreed to defer all of his individual salary in excess of \$30,000.00 per year.

27. At a subsequent date it was again found that Palmer's withholding taxes still had not been paid.

28. Petitioner testified that he did not have the authority to discharge Palmer's bookkeeper. This is contrary to the powers granted in the Stock Purchase Agreement, herein, dated June 20, 1972. (See: Finding of Fact No. 14 and Petitioner's Exhibit "3".)

29. The option which Winneco held to acquire an interest in Palmer was never exercised.

30. Petitioner Iammatteo devoted full time to the operation and management of Palmer.

31. The petitioner herein placed the exclusive responsibility for the failure to collect and pay over Palmer's withholding taxes on Wildstein and Francis Cohen, its bookkeeper.

32. Petitioner was not able to locate Francis Cohen for the purpose of giving testimony at the hearing, herein.

CONCLUSIONS OF LAW

A. That subsection (g) of section 685 of the Tax Law provides in part:

"Any person required to collect, truthfully account for, and pay over the tax imposed by this article who willfully fails to collect such tax or truthfully account for and pay over such tax or willfully attempts in any manner to evade or defeat the tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty equal to the total amount of the tax evaded, or not collected, or not accounted for and paid over."

B. That subsection (n) of section 685 of the Tax Law provides, in part, that:

"...the term person includes an individual, corporation or partnership or an officer or employee of any corporation (including a dissolved corporation), or a member or employee of any partnership, who as such officer, employee or member is under a duty to perform the act in respect of which the violation occurs."

C. That at all times, herein, the petitioner was actively engaged in the managerial and financial affairs of Palmer.

D. That at all times, herein, the petitioner was a person required to collect, truthfully account for, and pay over the tax in issue.

E. That in view of the foregoing, the petition herein is denied and the Notice of Deficiency is sustained.

DATED: Albany, New York

JUL 31 1981

STATE TAX COMMISSION

James G. Telle

PRESIDENT

Thomas H. Spr. L.

COMMISSIONER

Frank R. Koenig

COMMISSIONER