

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Wallace Johnston :
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 Periods:
12/16/74 -12/31/74 and 4/16/75 - 9/30/75.

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 23rd day of October, 1981, he served the within notice of Decision by certified mail upon Wallace Johnston, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

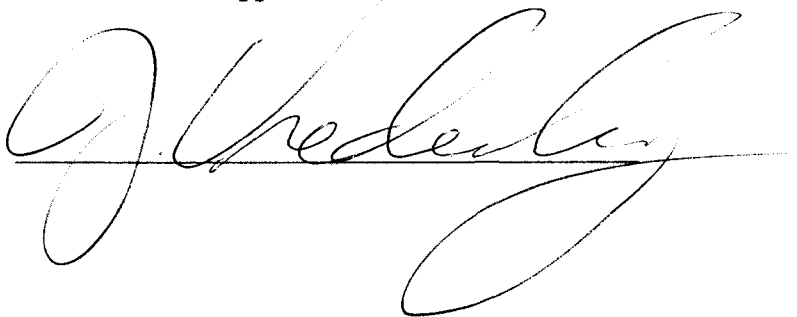
Wallace Johnston
1112 Kenyon Ave.
Plainfield, NJ 07060

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
23rd day of October, 1981.





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Wallace Johnston :
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 :
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State of New York
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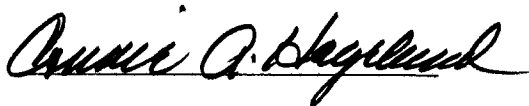
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 23rd day of October, 1981, he served the within notice of Decision by certified mail upon Donald A. Ostrower the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

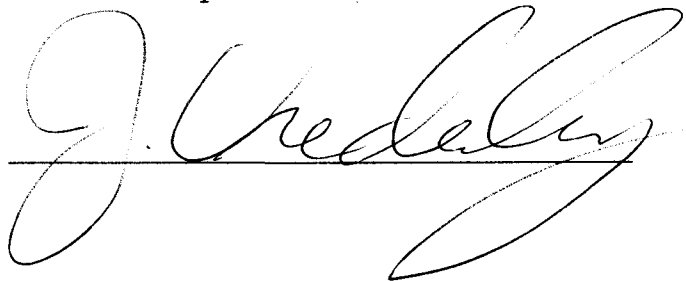
Donald A. Ostrower
3000 Marcus Ave.
Lake Success, NY 11040

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
23rd day of October, 1981.





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

October 23, 1981

Wallace Johnston
1112 Kenyon Ave.
Plainfield, NJ 07060

Dear Mr. Johnston:

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) 1138 & 1243 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
Donald A. Ostrower
3000 Marcus Ave.
Lake Success, NY 11040
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
WALLACE JOHNSTON	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the periods December 16,	:	
1974 through December 31, 1974 and April 16,	:	
1975 through September 30, 1975.	:	

Petitioner, Wallace Johnston, 1112 Kenyon Avenue, Plainfield, New Jersey 07060, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the periods December 16, 1974 through December 31, 1974 and April 16, 1975 through September 30, 1975 (File No. 21140).

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 November 18, 1980 at 9:15 A.M. Petitioner, Wallace Johnston, appeared with Donald A. Ostrower, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Angelo Scopellito, Esq., of counsel).

ISSUES

I. Whether income taxes withheld from employees of Ebony for periods in issue were paid over to New York State.

II. Whether petitioner was a responsible person required to collect, truthfully account for and pay over withholding taxes of Ebony Drafting Services, Inc. (hereinafter "Ebony") for the periods December 16, 1974 through December 31, 1974 and April 16, 1975 through September 30, 1975.

FINDINGS OF FACT

1. On September 26, 1977, the Audit Division issued a Notice of Deficiency and Statement of Deficiency against petitioner, Wallace Johnston, for subject periods, imposing a penalty against him equal to the amount of New York withholding tax allegedly due and owing from Ebony in the amount of \$4,349.70. The penalty was issued on the ground that if Ebony failed to pay over taxes due, then petitioner, as an officer of said entity, was liable thereon.

2. Petitioner argued that if Ebony had in fact failed to pay over income tax, he would not be a responsible person.

3. Subsequent to the hearing, the petitioner submitted a copy of a "Request For Transcript" (form TC-40) which he obtained from the Tax Compliance Bureau. The "transcript" together with other information submitted indicated that the taxes at issue had been fully paid subsequent to the issuance of the Notice of Deficiency (supra).

CONCLUSIONS OF LAW

A. That since income taxes withheld from the employees of Ebony, for periods in issue are fully paid, the question of petitioner's liability as a responsible person is rendered moot.

B. That the petition of Wallace Johnston is granted, and the Notice of Deficiency dated September 26, 1977 is cancelled.

DATED: Albany, New York

OCT 23 1981

STATE TAX COMMISSION

Charles G. Steele
PRESIDENT

Francis R. Krueger
COMMISSIONER

Mark J. Dineen
COMMISSIONER