

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Francis G. Lombardi :  
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.

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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 Francis G. Lombardi, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

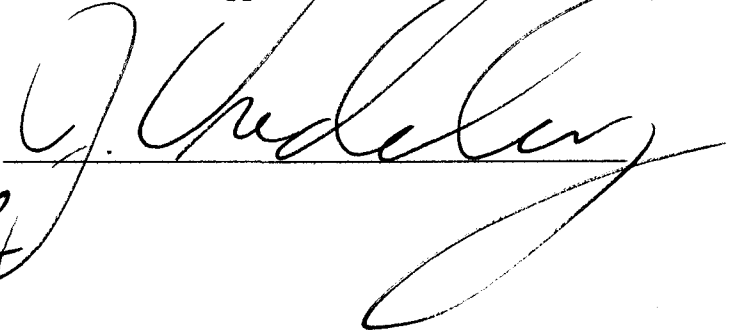
Francis G. Lombardi  
297 Judwin Ave.  
New Haven, CT 06515

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.

  
Christine A. Hagelund

  
Jay Vredenburg

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

October 30, 1981

Francis G. Lombardi  
297 Judwin Ave.  
New Haven, CT 06515

Dear Ms. Lombardi:

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

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

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Petitioner, Frances G. Lombardi, 297 Judwin Avenue, New Haven, Connecticut, 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. 19917).

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 October 21, 1980. The petitioner appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (Angelo A. Scopellito, Esq., of counsel).

ISSUE

Whether petitioner is a person responsible for the withholding taxes of a certain corporation and whether she willfully failed to pay such taxes to the State so as to be liable for a penalty under section 685(g) of the Tax Law in the amount of such taxes.

FINDINGS OF FACT

1. A Notice of Deficiency and a Statement of Deficiency were issued on February 28, 1977 to Frances G. Lombardi for the year 1973 in the amount of \$3,201.56 with respect to employment taxes owed by Loon Lake Estates, Inc. of Route 99, Loon Lake, New York.

2. Loon Lake Estates, Inc. was founded in 1971 to develop and sell real estate at Loon Lake in the Adirondack Mountains of New York State.

3. The income of Loon Lake Estates Inc. was meager in 1973 and 1974 compared to the expenditures to obtain HUD approval, environmental impact studies, public hearings for the Adirondack Park Agency, payroll for employees in the economically depressed Loon Lake area, installation of a water and sewer system, roads, maps, and many other costs connected with initial land development phases. On August 20, 1974, the assets, management and control of Loon Lake Estates, Inc. was taken over by Esic Capital, Inc. of 325 East 57th Street, New York City.

4. Loon Lake Estates, Inc. maintained an office at Loon Lake and another office at Greenvale, Long Island, where one of its officers, Ceasar Sanzaro, could meet with prospective customers. The Greenvale office was closed on January 31, 1974, when other offices were opened in Yonkers, New York.

5. The control of the corporation was in the hands of Anthony D'Elea of Loon Lake and Ceasar Sanzaro of 6 Coach Hill Lane, Northport, Long Island, New York. Mr. Sanzaro was a full-time teacher on Long Island. An impasse between these two developed, and in July, 1973 Mr. Sanzaro, in petitioner's words, "was fired" and played no part in the company thereafter.

6. The petitioner, Mrs. Lombardi, became an investor in Loon Lake Estates, Inc., shortly after it was formed. She owned at one time 11% of the outstanding shares of the corporation and was also a creditor by reason of paying debts of the corporation. She also was a guarantor on corporate loans. She now considers her entire financial investment as a total loss. Other investors were Sheldon Farewell of the Bronx, New York, and Edward Nardelli of Bridgeport, Connecticut. Mrs. Lombardi served on the board of directors from February 3, 1973 to June 14, 1973. On June 14, 1973, she was elected Assistant Treasurer and Sheldon Farewell was elected Treasurer. This position was without compensation.

During 1973, she also helped staff and took charge of the Long Island office of the company. These duties were also without compensation. She resigned her offices on August 20, 1974.

8. The corporation maintained a bank account at the Bank of Lake Placid. The only person signing checks was Anthony D'Elea. This was the only account used to make payroll payments. The corporation also maintained an account at the Marine Midland Bank in Saranac Lake. Only D'Elea and Sanzaro were signatories to that account. It was closed on September 7, 1973.

9. The corporation maintained a petty cash account at the Security National Bank at Greenvale, Long Island. Signatories to this account were D'Elea, Sanzaro, Farewell and petitioner. Petitioner wrote checks on this account for the expenses of the Long Island office and, without authority, to pay the past due taxes of the corporation. No payroll was ever paid from this account. This account was closed on January 31, 1974.

#### CONCLUSIONS OF LAW

A. The petitioner has amply shown that her limited duties with the corporation did not involve the payment of the payroll or payroll taxes. Her limited access to the petty cash fund is not sufficient to show otherwise. She cannot therefore be found to be "a person required to collect, truthfully account for and pay over the tax imposed by this article" within the meaning of section 685(g) of the Tax Law. Furthermore, her use of petty cash funds without the corporation's authority to pay the corporation's past due taxes only shows that any failure, if any, on her part to pay current payroll taxes was not wilfull within the meaning of section 685(g) of the Tax Law.

B. That the petition of Frances G. Lombardi is granted and the Notice of Deficiency is cancelled.

DATED: Albany, New York

OCT 30 1981

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER