

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Vincent Lorigo :
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 :
1975.

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 Vincent Lorigo, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Vincent Lorigo
234 Bird Ave.
Buffalo, NY 14213

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.

James A. Hagelund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Vincent Lorigo :

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 :
1975.

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 Ralph C. Lorigo the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Ralph C. Lorigo
Greenan, Lorigo & Whelan
3904 Seneca St.
West Seneca, NY 14224

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.

James A. Highland

J. Vredenburg

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

October 30, 1981

Vincent Lorigo
234 Bird Ave.
Buffalo, NY 14213

Dear Mr. Lorigo:

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
Ralph C. Lorigo
Greenan, Lorigo & Whelan
3904 Seneca St.
West Seneca, NY 14224
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
VINCENT LORIGO	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1975.	:	

Petitioner, Vincent Lorigo, 234 Bird Avenue, Buffalo, New York 14213, 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 1975 (File No. 22072).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, 65 Court Street, Buffalo, New York, on January 28, 1981 at 10:45 A.M. Petitioner Vincent Lorigo appeared with Ralph C. Lorigo, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Patricia L. Brumbaugh, Esq., of counsel).

ISSUE

Whether petitioner was a responsible person required to collect, truthfully account for and pay over New York State withholding taxes of JLB Provisions, Inc. for the period January 1, 1975 through March 31, 1975.

FINDINGS OF FACT

1. During 1975, three forms IT-2101, New York State Income Tax Bureau - Employers Return of Personal Income Tax Withheld for the period January 1, 1975 through March 31, 1975, were filed with the Income Tax Bureau by JLB Provisions, Inc. showing tax having been collected for the period stated above amounting to \$972.29. The forms were signed by Jeffrey Bengerman. No remittance was made with the returns.

2. On February 15, 1978, the Audit Division issued a Statement of Deficiency and a Notice of Deficiency to petitioner Vincent Lorigo for the period January 1 to March 31, 1975 for \$972.29. The deficiency asserted a penalty equal to the unpaid withholding taxes due from JLB Provisions, Inc.

3. Petitioner, Vincent Lorigo, was a founder of JLB Provisions, Inc. He was president and 50 percent stockholder of JLB Provisions, inc. during 1975. Petitioner was in charge of the day-to-day operations of JLB Provisions, Inc. and supervised the employees.

4. Petitioner contended that he had no voice or authority in the financial functions of the corporation though he had the authority to sign checks. He also contended that the financial affairs were handled predominantly by the secretary-treasurer, Jeffrey Bengerman. He further contended that although he was president, he was unaware that the withholding taxes were due.

CONCLUSIONS OF LAW

A. That petitioner, Vincent Lorigo, was a person required to collect, truthfully account for and pay over New York State withholding taxes due from JLB Provisions, inc. for the period January 1 through March 31, 1975 in accordance with the meaning and intent of sections 685(n) and 685(g) of the Tax Law.

B. That the term "willful" as used in the statute means an act, default or conduct voluntarily done with knowledge that, as a result, trust funds belonging to the government will be used for other purposes (Matter of Levin v. Gallman, 42 N.Y.2d 32, 396 N.Y.S.2d 623, 364 N.E.2d 1316). The court further stated that no showing of intent to deprive the Government of its money is necessary only something more than accidental nonpayment is required (Id. at 34). In light of these principles petitioner cannot avoid responsibility by failing to concern himself in seeing that taxes are being paid when he is

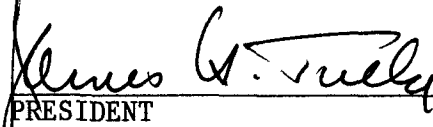
obviously in charge of assets of the corporation. McHugh v. State Tax Commission, 417 N.Y.S.2d 799. An examination of the instant record establishes that petitioner was president of the corporation, was authorized to sign checks and owned one half of the stock. The petitioner's statement that he did not participate in the management of the business, without supporting proof, fails to meet his burden that he, in fact, was not "willful" in his responsibilities.

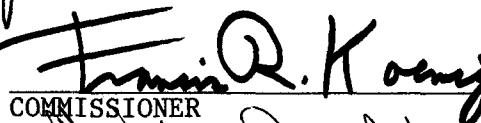
C. That the petition of Vincent Lorigo is denied and the Notice of Deficiency dated February 15, 1978 is sustained.

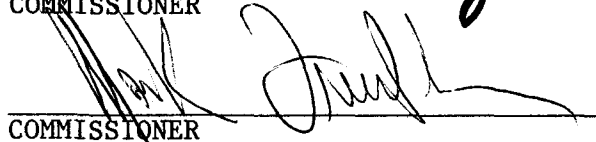
DATED: Albany, New York

OCT 30 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER