

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
John Oimage, Sr. :  
: 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 12/1-12/31/74 & 1/1-1/31/75 :

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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 5th day of June, 1981, he served the within notice of Decision by certified mail upon John Oimage, Sr., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

John Oimage, Sr.  
1254 N.W. 43rd St.  
Crystal Lake  
Pompano, FL 33060

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  
5th day of June, 1981.

*Connie P. Hayalund*

*J. Vredenburg*

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
John Omage, Sr. :

: 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 12/1-12/31/74 & 1/1-1/31/75

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 5th day of June, 1981, he served the within notice of Decision by certified mail upon Samuel M. Schwartz the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. Samuel M. Schwartz  
Schwartz & Berg  
60 E. 42nd St.  
New York, NY 10165

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  
5th day of June, 1981.

*Connie A. Hagelund*

*J. Vredenburg*

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

June 5, 1981

John Oimage, Sr.  
1254 N.W. 43rd St.  
Crystal Lake  
Pompano, FL 33060

Dear Mr. Oimage:

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  
Samuel M. Schwartz  
Schwartz & Berg  
60 E. 42nd St.  
New York, NY 10165  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
JOHN OMAGE, SR.	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Periods December 1, 1974 :	:	
to December 31, 1974 and January 1, 1975 to	:	
January 31, 1975.	:	

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Petitioner, John Omage, Sr., 1254 North West 43rd Street, Crystal Lake, Pompano, Florida 33060, 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 1, 1974 to December 31, 1974 and January 1, 1975 to January 31, 1975 (File No. 15277).

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 October 1, 1980 at 1:15 P.M. Petitioner, John Omage, Sr., appeared by Schwartz & Berg (Samuel M. Schwartz, CPA) The Audit Division appeared by Ralph J. Vecchio, Esq. (Abraham Schwartz, Esq., of counsel).

ISSUE

Whether petitioner is subject to a penalty under section 685, subdivisions (g) and (n) of the Tax Law, as a person who willfully failed to collect, account for and pay over withholding tax due and owing from Trunz Meat Co., Inc. (hereinafter "Trunz") for 1974 and 1975.

FINDINGS OF FACT

1. On April 12, 1976, the Audit Division issued a Notice of Deficiency and Statement of Deficiency against petitioner, John Omage, Sr., imposing a

penalty against him equal to the amount of unpaid New York withholding taxes due and owing from Trunz in the amount of \$349.80 for the period December 1, 1974 to December 31, 1974 and \$94.40 for period January 1, 1975 to January 31, 1975, for a total of \$444.20. The penalty was issued on the ground that petitioner was a person required to collect, truthfully account for and pay over taxes at issue, and that he willfully failed to do so.

2. Petitioner, John Omage, Sr., in the early 1970's was the principal officer/stockholder of Paterson Meat Co., Inc. Said entity was subsequently merged into Dovos, Incorporated, (hereinafter "Dovos"), a publicly held conglomerate, by exchange of petitioner's stock interest in Paterson Meat Co., Inc., for stock of Dovos. Paterson Meat Co., Inc. was subsequently liquidated. Dovos, thereafter, acquired Trunz Meat Co., Inc. Petitioner was appointed president and director of Trunz. Petitioner as president of Trunz, had authority to oversee its management and financial policies.

3. On September 11, 1974, petitioner tendered his resignation as officer and director of Trunz to Mr. Bernard H. Mogil, vice president of Dovos effective September 13, 1974. The resignation was tendered prior to the accrual of liability at issue.

#### CONCLUSIONS OF LAW

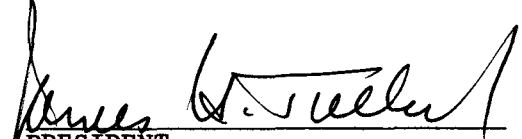
A. That petitioner, John Omage, Sr., was not a person required to collect, truthfully account for and pay over unpaid New York State personal income taxes withheld by Trunz Meat Co., Inc., within the meaning of section 685(n) of the Tax Law. Accordingly, petitioner is not subject to a penalty in an amount equal to the unpaid withholding taxes for corporation under section 685(g) of the Tax Law.


B. That the petition of John Omage, Sr. is granted and the Notice of Deficiency issued April 12, 1976 is cancelled.

DATED: Albany, New York

JUN 5 1981

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER