

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :

of

Anthony Rigole :

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 1972. :

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 January, 1981, he served the within notice of Decision by certified mail upon Anthony Rigole, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Anthony Rigole  
12 Capital Ct.  
Hauppauge, NY 11787

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 January, 1981.

*Cornelia P. Hagellund*

*J. Vredenburg*

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

January 23, 1981

Anthony Rigole  
12 Capital Ct.  
Hauppauge, NY 11787

Dear Mr. Rigole:

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  
Edward Newman  
1 Old Country Rd.  
Carle Place, NY 11514  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :

ANTHONY RIGOLE :

DECISION

for Redetermination of a Deficiency or :  
for Refund of Personal Income Tax under  
Article 22 of the Tax Law for the Year :  
1972.

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Petitioner, Anthony Rigole, 12 Capital Court, Hauppauge, New York 11787, 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 1972 (File No. 16388).

A formal hearing was held before William J. Dean, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 23, 1978 at 1:15 P.M. Petitioner appeared by Edward Newman, Esq. The Audit Division appeared by Peter Crotty, Esq. (Samuel Freund and Irving Atkins, Esqs., of counsel).

#### ISSUE

Whether petitioner was a person required to collect, truthfully account for and pay over New York State withholding taxes of Metric Measurements, Inc.

#### FINDINGS OF FACT

1. Metric Measurements, Inc. (hereinafter "Metric") failed to pay over to the New York State Income Tax Bureau personal income taxes withheld from its employees for the period February 1, 1972 through August 15, 1972 in the amount of \$8,402.28 computed as follows:

<u>Withholding Tax Period</u>	<u>Amount</u>
February 1 to February 15, 1972	\$ 582.57
February 16 to February 29, 1972	655.05
March 1 to March 15, 1972	768.99
March 16 to March 31, 1972	1,000.57
April 1 to April 15, 1972	468.90
April 16 to April 30, 1972	595.76
May 1 to May 15, 1972	628.75
May 16 to May 31, 1972	719.10
June 1 to June 15, 1972	598.21
June 16 to June 30, 1972	477.12
July 1 to July 15, 1972	535.86
July 16 to July 31, 1972	512.42
August 1 to August 15, 1972	<u>858.98</u>
TOTAL DUE	<u><u>\$8,402.28</u></u>

2. On July 29, 1974, the Income Tax Bureau issued a Statement of Deficiency and a Notice of Deficiency against petitioner asserting a penalty (\$8,794.87) equal to the amount of New York State withholding taxes due from Metric for the above periods. This was done on the grounds that petitioner was a person required to collect, truthfully account for and pay over said taxes, and that he willfully failed to do so. The above penalty was abated, in part, by the Income Tax Bureau in the amount of \$392.59.

3. Metric provided a carpet measuring service for department stores, measuring for wall-to-wall carpets. Prior to the years in question, petitioner had a measuring company of his own called Daniel's Measuring Company. Metric was owned by Administrative Systems, Inc. (hereinafter "ASI"), its parent corporation. Officers of ASI heard about petitioner and asked him to become president of Metric.

4. Metric employed fifteen to thirty employees. Petitioner was responsible for estimating the cost of each job to be undertaken and overseeing the employees. He could hire and fire employees.

5. Sometime in 1971, ASI went into a factoring situation. Accounts receivable of Metric were turned over to the factor. The factor would loan

funds to ASI against Metric's receivables. Monies paid on such accounts receivable did not pass through Metric. When petitioner wished to have payroll checks drawn for Metric's employees, ASI would be requested to issue the necessary checks. Petitioner was authorized to sign checks he received from ASI. Payroll checks and tax returns and other matters dealing with finances were handled by ASI. Tax returns for Metric were prepared by ASI.

6. Petitioner did not become aware of the fact that withholding taxes were not being paid until August of 1972 when a number of Metric employees reported to him that their payroll checks had "bounced".

CONCLUSIONS OF LAW

A. That during the period in question, financial control of Metric was in the hands of ASI, its parent corporation, and/or ASI's factor. The payroll was prepared by ASI and cash books and records were maintained by ASI. Petitioner's responsibilities at Metric did not extend to financial matters. Rather, his job was to supervise operations of the carpet measuring service. Accordingly, petitioner was not a person required to collect, truthfully account for and pay over New York State withholding taxes of Metric Measurements, Inc., within the meaning of subsections (g) and (n) of section 685 of the Tax Law.

B. That the petition of Anthony Rigole is granted and the Notice of Deficiency dated July 29, 1974 is cancelled.

DATED: Albany, New York

JAN 23 1981

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER