

STATE OF NEW YORK

STATE TAX COMMISSION

---

In the Matter of the Petition  
of  
Leon Sadacca

:

:

: 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 Years :  
1972 & 1973.

---

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 19th day of June, 1981, he served the within notice of Decision by certified mail upon Leon Sadacca, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Leon Sadacca  
7600 Stanton Ave.  
Philadelphia, PA 19118

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  
19th day of June, 1981.

*Connie A. Haglund*

*J. Vredenburg*

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition  
of  
Leon Sadacca

:

:

: 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 Years :  
1972 & 1973.

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 19th day of June, 1981, he served the within notice of Decision by certified mail upon Bernard M. Isaacs 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. Bernard M. Isaacs  
Gurfein & Isaacs  
535 Fifth Ave.  
New York, NY 10017

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  
19th day of June, 1981.

*Connie A. Haglund*

*J. Vredenburg*

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

June 19, 1981

Leon Sadacca  
7600 Stanton Ave.  
Philadelphia, PA 19118

Dear Mr. Sadacca:

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  
Bernard M. Isaacs  
Gurfein & Isaacs  
535 Fifth Ave.  
New York, NY 10017  
Taxing Bureau's Representative

STATE OF NEW YORK  
STATE TAX COMMISSION

---

In the Matter of the Petition	:	
of	:	
LEON SADACCA	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Years 1972 and 1973.	:	

---

Petitioner, Leon Sadacca, 7600 Station Avenue, Philadelphia, Pennsylvania 19118, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1972 and 1973 (File No. 12680).

A formal hearing was held before Herbert Carr, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on March 21, 1979, and continued to completion before Melvin S. Barasch, Hearing Officer, at the same location on June 20, 1979. Petitioner appeared by Gurfein & Isaacs (Bernard M. Isaacs, Esq., of counsel). The Audit Division appeared by Ralph J. Vecchio, Esq. (Paul Lefebvre, Esq., of counsel).

ISSUE

Whether petitioner was a person required to collect, truthfully account for and pay over withholding taxes due from Metalcraft, Inc., for the years 1972 and 1973.

FINDINGS OF FACT

1. Metalcraft, Inc., Roosevelt Field, Garden City, New York, failed to pay over to New York State personal income taxes withheld from its employees' wages for the years 1972 and 1973.

2. On December 23, 1974, a Statement of Deficiency was issued against Leon Sadacca imposing a penalty equal to the amount of New York State withholding taxes due from Metalcraft, Inc., for the years 1972 and 1973. This was done on the grounds that he was a person required to collect, truthfully account for and pay over said taxes and that he willfully failed to do so. Accordingly, on said date, the Notice of Deficiency for \$20,553.00 was issued against petitioner. Said amount was subsequently adjusted and reduced to \$20,386.69.

3. In 1970, Leon Sadacca, who was in his eighties, invested some \$134,000.00 in Metalcraft, Inc. He was its financial consultant, comptroller and a director. In 1971, he continued to invest in the company advancing an additional \$61,000.00. On December 9, 1971, he had a prostatectomy and was advised by his doctor to remain at his home in Philadelphia and not attend to business in New York. On February 22, 1972 Metalcraft, Inc. and petitioner entered into a contract to sell Metalcraft, Inc. stock to Evdel Technodynamics, Inc. (hereinafter referred to as Evdel). On the closing, the purchaser was to purchase 300,000 shares of common stock, and 7500 shares of preferred stock owned by petitioner at a specified price.

The contract was affirmed and ratified on March 21, 1972. Paragraph 6.10(v) of the contract states that:

"Resignations of the present officers and directors of Metalcraft as shall be directed by Buyer."

Operational control and financial control of Metalcraft, Inc. were turned over to the purchaser. The authority to sign checks was no longer with petitioner as new signatories were named. On April 25, 1972, new officers were designated. Named as officials of Metalcraft, Inc. were the following:

Chairman  
Executive Vice President  
First Assistant Secretary  
Vice President

Frederic J. Evans  
Hans U. Wydler  
Richard H. Edell  
H. Russell Brand

On March 20, 1972, a special meeting of the Board of Directors of Metalcraft, Inc. authorized issuance of shares to purchaser Evdel. Four additional directors were to be elected. On March 21, 1972, the purchase agreement and modification agreement were ratified. New directors named were Henry J. Cordes, president; Nathan Shapiro, secretary and Alan Shapiro, assistant secretary.

4. The public announcement by Metalcraft, Inc. of the transaction between petitioner and Evdel summarized the main provisions of the contract of sale between the parties:

"Metalcraft, Inc., Roosevelt Field, Garden City, New York, announces that Evdel Technodynamics, Inc., of Forest Hills, New York, has purchased a controlling interest in the Corporation.

The following are the highlights of a transaction consummated on March 22, 1972, between the two parties, and Mr. Leon Sadacca, previously the controlling shareholder of Metalcraft:

(a) Evdel acquired by purchase from Metalcraft, 600,000 shares of Metalcraft Common Stock, \$.01 par value; Common Stock Purchase Warrants to purchase 300,000 shares of Metalcraft Common Stock at \$1.00 per share (subject to adjustment) for a period of four years after March 22, 1973; 2,500 shares of Metalcraft's 8% 5-year Convertible Subordinated Notes at 100% of face value, convertible at the rate of 1 share of common stock for each \$1.00 of principal amount (subject to adjustment).

(b) Evdel acquired from Leon Sadacca 300,000 shares of Metalcraft's Common Stock owned by him, and 7,500 shares of Metalcraft's 8% Cumulative Convertible Preferred Stock owned by him subject to redelivery in the event that certain conditions are not met by Evdel.

(c) Leon Sadacca purchased from Metalcraft a \$25,000 8% 5-year Convertible Subordinated Note for \$25,000.00, convertible at the rate of 1 share for each \$1.00 of principal amount (subject to adjustment), and 4,300 shares of 8% Cumulative Convertible Preferred Stock for \$43,000, and made payment by cancellation of Metalcraft's indebtedness due him aggregating \$68,000.

(d) Frederic J. Evans, Chairman of Evdel, became a director, Chairman of the Board and Chief Executive Officer of Metalcraft; Hans U. Wydler, a former Executive Vice-President, and Vice-President of the Greenwich Savings Bank and the Chemical Bank respectively, became a director, Executive Vice-President and Chief Financial Officer of Metalcraft; Richard H. Edell, Vice-President of Evdel became a director and Assistant Treasurer of Metalcraft; Henry J. Cordes, President of Metalcraft, retains said position and he, Nathan Shapiro and Leon Sadacca continue as directors of Metalcraft. DATED: March 22, 1972"

5. Following the sale on March 22, 1972 of petitioner's stock to Evdel, petitioner had no control or voice in the operation of the company. The assets of Metalcraft, Inc. were sold to satisfy a finance company, a mortgagee. Petitioner received nothing for his loans or his work. Petitioner's personal loss was over \$200,000.00.

CONCLUSIONS OF LAW

A. That petitioner, Leon Sadacca, director, stockholder and corporate check signatory for the period March 1, 1972 to March 22, 1972 was a person required to collect, truthfully account for and pay over New York State withholding taxes due from Metalcraft, Inc. for said period in accordance to the meaning and intent of section 685(g) of the Tax Law.

B. That petitioner, Leon Sadacca, although a director of Metalcraft, Inc. had no control nor did he have any voice in the management and operations of the company subsequent to the sale of his stock on March 22, 1972 relinquishing control and authorization to sign corporate checks. Petitioner was not a person under any duty thereafter to perform the tasks of collecting, accounting for and paying over the withholding taxes deducted from the wages of employees of the corporation within the meaning of section 685(g) of the Tax Law.

C. That the petition of Leon Sadacca is granted to the extent indicated in Conclusion of Law "B" above. The Audit Division is hereby directed to modify accordingly the Notice of Deficiency issued on December 23, 1974; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

JUN 19 1981

STATE TAX COMMISSION  
*James A. Sullivan*  
PRESIDENT  
*Thomas H. [unclear]*  
COMMISSIONER  
*Francis R. Koenig*  
COMMISSIONER