

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

James G. Tallon :

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 1970. :

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

James G. Tallon
3 Blakelock Rd.
Manhasset, NY

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.

Cornie G. Hagelund

[Signature]

STATE OF NEW YORK
STATE TAX COMMISSION

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of

James G. Tallon

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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 1970. :

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 Douglas P. Null 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. Douglas P. Null
600 Old Country Rd.
Garden City, NY 11030

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
23rd day of January, 1981.

Conrad A. Hagelund

J. Vredenburg

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

January 23, 1981

James G. Tallon
3 Blakelock Rd.
Manhasset, NY

Dear Mr. Tallon:

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
Douglas P. Null
600 Old Country Rd.
Garden City, NY 11030
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
JAMES G. TALLON	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1970.	:	

Petitioner, James G. Tallon, 3 Blakelock Road, Manhasset, New York 11030, 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 1970 (File No. 13911).

A formal hearing was held before Edward L. Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on May 8, 1979 at 9:15 A.M. Petitioner appeared by Douglas P. Null, Esq. The Audit Division appeared by Peter Crotty, Esq. (Frank Levitt, Esq., of counsel).

ISSUE

Whether petitioner is subject to a penalty pursuant to section 685(g) of the Tax Law as a person required to collect truthfully account for and pay over withholding taxes due and owing from Aims Education, Inc. for 1970.

FINDINGS OF FACT

1. Under date of October 30, 1972 the Income Tax Bureau issued a Statement of Deficiency against petitioner, James G. Tallon, imposing a penalty equal to the total amount of unpaid withholding taxes due from Aims Education, Inc. (hereinafter "Aims") for 1970. Said statement was issued 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. Accordingly, on October 30, 1972 a Notice of Deficiency was issued against petitioner for \$6,703.50, broken

down as follows:

<u>PERIOD</u>	<u>AMOUNT</u>
1/1 to 6/30/70	\$3,534.60
7/1 to 12/31/70	\$3,168.90
TOTAL DUE	<u>\$6,703.50</u>

2. Petitioner became associated with Aims in September, 1969 as Vice President of Marketing. He later became President of Aims, however, his primary function and duties still remained in the marketing field.

3. Petitioner was authorized as a co-signatory of checks, however, he was directed by the Chairman of the Board, the chief executive officer who controlled 90 percent of the stock of Aims, as to which creditors were or were not to be paid. If petitioner failed to follow the directions of the Chairman of the Board, it would have resulted in his dismissal.

4. It was contended by petitioner that he became president of Aims on September 1, 1970 and that, if determined to be a responsible person, said period of personal liability should begin on this date. The Employers Return of New York State Personal Income Tax Withheld for the period July 1, 1970 to December 31, 1970 was signed by petitioner on January 28, 1971.

5. Aims had also failed to remit Federal withholding taxes and petitioner's liability for said taxes was examined by the Internal Revenue Service. Said examination resulted in the determination that petitioner was not a responsible person and, accordingly, no Federal deficiency or assessment was issued.

6. Petitioner was not a stockholder of Aims nor did he participate in the financing of corporate loans. When petitioner severed his employment with Aims, he was due approximately five months back pay.

CONCLUSIONS OF LAW

A. That petitioner lacked the requisite "final word" as to what bills should or should not be paid and, therefore, was not a person required to collect, truthfully account for and pay over to New York State withholding

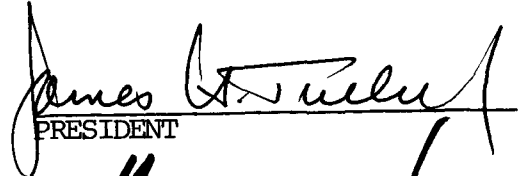
taxes due and owing from Aims Education, Inc. for 1970 (Wiggins v. U.S. 188 F. Supp. 374, Sherwood v. U.S. 246 F. Supp. 502).

B. That the petition of James G. Tallon is granted and the Notice of Deficiency issued October 30, 1972 is hereby cancelled.

DATED: Albany, New York

JAN 23 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER