

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
Peter Cannold	:	
	:	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	:	
1976, 1977 & 1978.	:	

State of New York
County of Albany

Connie Hagelund, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 9th day of April, 1982, she served the within notice of Decision by certified mail upon Peter Cannold, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Peter Cannold
4521 Waldo Ave.
Riverdale, NY 10471

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
9th day of April, 1982.

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Peter Cannold :

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 :
1976, 1977 & 1978 :
_____:

State of New York
County of Albany

Connie Hagelund, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 9th day of April, 1982, she served the within notice of Decision by certified mail upon Burt M. Lavenburg the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Burt M. Lavenburg
Greenberg & Levy
450 Seventh Ave.
New York, NY 10001

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
9th day of April, 1982.

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

April 9, 1982

Peter Cannold
4521 Waldo Ave.
Riverdale, NY 10471

Dear Mr. Cannold:

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
Law Bureau - Litigation Unit
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Burt M. Lavenburg
Greenberg & Levy
450 Seventh Ave.
New York, NY 10001
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
PETER CANNOLD	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article	:	
22 of the Tax Law for the Years 1976, 1977	:	
and 1978.	:	

Petitioner, Peter Cannold, 4521 Waldo Avenue, Riverdale, New York 10471, 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 1976, 1977 and 1978 (File No. 26995).

A formal hearing was held before Doris Steinhardt, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on December 3, 1981 at 1:15 P.M. Petitioner appeared by Greenberg & Levy (Burt M. Lavenberg, CPA). The Audit Division appeared by Paul Coburn, Esq. (William Fox, Esq., of counsel).

ISSUES

I. Whether Raincraft Corp. remitted to the State Tax Commission all taxes deducted and withheld from employee wages for the periods at issue.

II. Whether petitioner was a person responsible for collecting and paying over to the State Tax Commission taxes withheld from the wages of employees of Raincraft Corp., who willfully failed to do so, and is therefore liable for the penalty imposed under section 685(g) of the Tax Law.

FINDINGS OF FACT

1. On March 26, 1979, the Audit Division issued to petitioner Peter Cannold, as secretary-treasurer of Raincraft Corp. ("Raincraft"), a notice of

deficiency, asserting penalties equal to the amount of New York State withholding taxes of Raincraft which were alleged to be due and unpaid for the years 1976, 1977 and 1978 in the respective amounts of \$775.62, \$7,819.68 and \$4,527.08.

2. On December 17, 1979, the Audit Division cancelled the liabilities asserted for 1976 and 1978, and reduced the liability asserted for 1977 to the amount \$4,649.95.

3. For the first three months of 1977, Raincraft filed biweekly returns and remitted payments to the Audit Division for the taxes withheld from employee wages in the total amount of \$3,169.73. The date and amount of each Raincraft check were as follows:

<u>DATE</u>	<u>AMOUNT</u>
1/14/77	\$ 453.01
1/28/77	708.01
2/11/77	577.96
3/01/77	537.12
3/18/77	659.54
3/24/77	234.09
	<u>\$3,169.73</u>

An abstract from the Raincraft general ledger, offered into evidence by petitioner, confirms the withholding of taxes in the amounts as set forth above.

4. Raincraft ceased manufacturing in mid-March, 1977 and discharged all employees, with the exception of one or two clerks. On March 30, 1977, Raincraft made an assignment of all its assets for the benefit of creditors to the New York Credit Men's Adjustment Bureau, Inc. On such date, the corporation completely ceased operations and vacated its business premises.

CONCLUSIONS OF LAW

A. That in accordance with Finding of Fact 2, the penalties asserted against petitioner under section 685(g) of the Tax Law for the years 1976 and 1978 are cancelled.

B. That all taxes deducted and withheld from employee wages for the period January 1 through March 30, 1977, the only portion of that year during which Raincraft was in operation, have been remitted to the State Tax Commission. Accordingly, the penalty asserted against petitioner for 1977 is cancelled.

C. That in view of the foregoing, it is unnecessary to decide upon the second issue raised.

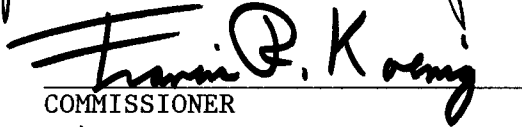
D. That the petition of Peter Cannold is hereby granted, and the notice of deficiency issued March 26, 1979 is cancelled in full.

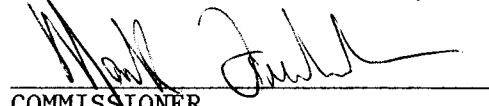
DATED: Albany, New York

APR 09 1982

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER