

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
Anthony Esposito and Doris Esposito	:	AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or for Refund	:	
of Personal Income Tax under Article 22 of the Tax	:	
Law and Chapter 46, Title T of the Administrative	:	
Code of the City of New York for the Years 1978	:	
and 1979.	:	

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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 15th day of July, 1983, she served the within notice of Decision by certified mail upon Anthony & Doris Esposito, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Anthony & Doris Esposito  
2534 East 63rd St.  
Brooklyn, NY 11235

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  
15th day of July, 1983.

  
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\_\_\_\_\_

AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Anthony Esposito and Doris Esposito :  
for Redetermination of a Deficiency or for Refund :  
of Personal Income Tax under Article 22 of the Tax :  
Law and Chapter 46, Title T of the Administrative :  
Code of the City of New York for the Years 1978 :  
and 1979. :

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AFFIDAVIT OF MAILING

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 15th day of July, 1983, she served the within notice of Decision by certified mail upon Norman Turk and Alan J. Kreitzman, the representatives of the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Norman Turk  
and Alan J. Kreitzman, CPA  
67 Harned Rd.  
Commack, 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 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  
15th day of July, 1983.

*Kathy Pfaffenbach*

AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174

*Connie A. Hagelund*

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

July 15, 1983

Anthony & Doris Esposito  
2534 East 63rd St.  
Brooklyn, NY 11235

Dear Mr. & Mrs. Esposito:

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 & 1312 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 Law 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  
Building #9 State Campus  
Albany, New York 12227  
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Norman Turk  
and Alan J. Kreitzman, CPA  
67 Harned Rd.  
Commack, NY  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
ANTHONY ESPOSITO and DORIS ESPOSITO	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law and Chapter 46, Title T of the	:	
Administrative Code of the City of New York for	:	
the Years 1978 and 1979.	:	

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Petitioners, Anthony Esposito and Doris Esposito, 2534 East 63rd Street, Brooklyn, New York 11235, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law and Chapter 46, Title T of the Administrative Code of the City of New York for the years 1978 and 1979 (File Nos. 32345 and 32346).

A formal hearing was held before Dennis M. Galliher, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on December 1, 1982 at 3:00 P.M. Petitioners appeared by Norman Turk, Esq. and by Alan J. Kreitzman, C.P.A. The Audit Division appeared by Paul B. Coburn, Esq., (Ann W. Murphy, Esq., of counsel).

ISSUES

Whether the dollar amount of the penalties asserted against petitioners for failure to collect, account for and pay over withholding taxes is correct.

FINDINGS OF FACT

1. On September 29, 1980, the Audit Division issued to each of the petitioners, Anthony Esposito and Doris Esposito, separate statements of deficiency and notices of deficiency notifying petitioners of asserted deficiencies as follows:

<u>Period</u>	<u>Amount</u>
1/1/78 - 12/31/78	\$12,246.35
1/1/79 - 2/15/79	1,961.49
4/1/79 - 6/30/79	1,830.83
<u>TOTAL</u>	<u>\$16,038.67</u>

The statements of deficiency indicated that the asserted deficiencies pertained to unpaid withholding taxes of V & D, Inc. ("V & D"), 626 Sheepshead Bay Road, Brooklyn, New York.

2. A series of computer printouts dated December 9, 1980 listed the outstanding assessments for unpaid withholding tax owed by V & D. It is these assessments which constitute the basis and amount of the deficiencies asserted against petitioners, as follows:

<u>Assessment Number</u>	<u>Amount Due</u>	<u>Period</u>
W7910010707	\$12,246.25	1/1/78 through 12/31/78
W7909270499	614.80	1/1/79 through 1/15/79
W7909270500	614.80	1/16/79 through 1/31/79
W7909270501	731.89	2/1/79 through 2/15/79
W7909270502	235.72	4/1/79 through 4/15/79
W7909270503	295.40	4/16/79 through 4/30/79
W7911160767	886.20	6/1/79 through 6/15/79
W7911160766	<u>413.51</u>	6/16/79 through 6/30/79
<u>TOTAL</u>	<u>\$16,038.57</u>	

3. By a letter dated January 13, 1983, the Audit Division advised that the amount due as shown above (\$16,038.57) should be reduced to \$15,007.71, as the result of a payment received on behalf of V & D in the amount of \$1,030.96. It was further noted that this payment had been applied specifically in full satisfaction of assessment number W7909270499 (\$614.80), with the remaining amount of the payment (\$316.16) being applied in partial satisfaction of assessment number W7909270500 (reducing said assessment to \$298.64). No other adjustments or payments against V & D's withholding tax liabilities were reflected on this letter of January 13, 1983, which had been obtained by the

Audit Division's representative in order to verify the deficiencies outstanding against V & D.

4. During the period at issue, V & D was engaged solely in the business of providing transportation services as a carrier of handicapped students for the City of New York, pursuant to a contract between V & D and the New York City Board of Education. This contract was in effect from September of 1971 through June of 1979.

5. In the normal course of its business under the above contract, V & D would submit a bill to the Board of Education on the last day of each month in which services had been rendered and would receive payment approximately twenty days thereafter.

6. Testimony by Alan Kreitzman indicated that he first began performing accounting services for V & D and for petitioners in the early part of 1979. Mr. Kreitzman reviewed the books and records of V & D as prepared by its predecessor accountants and, after matching withholding tax amounts to payments made, discovered the existence of an outstanding liability for withholding tax owed by V & D.

7. Following his review of V & D's books, Mr. Kreitzman requested of the Audit Division's Brooklyn District Office a listing of outstanding withholding tax liabilities owed by V & D. In response to this request, the Audit Division furnished to Mr. Kreitzman a list of V & D's outstanding withholding tax liabilities as of February 21, 1980, detailing the various assessment numbers, periods involved, basic tax per period, and penalty and interest accrued on each assessment through February 21, 1980.<sup>1</sup>

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<sup>1</sup> Although the assessments against V & D reflect accrued penalty and interest charges, the deficiencies against petitioners at issue herein reflect only the basic withholding tax unpaid without penalty or interest charges.

8. The above list included each of the assessments shown in Finding of Fact "2", as well as additional outstanding assessments as follows:

<u>Assessment Number</u>	<u>Period</u>	<u>Tax</u>	<u>Penalty &amp; Interest</u>	<u>Total 2/21/80</u>
W7703240936	12/1/76 - 12/31/76	\$ -0-	\$1,670.12	\$1,670.12
W7803292390	12/16/77 - 12/31/77	-0-	327.55	327.55
W7911080397	5/1/79 - 5/15/79	806.14	93.13	899.27
W7911080398	5/16/79 - 5/31/79	806.15	89.75	895.90

9. The computer printouts containing the list of assessments comprising the deficiencies at issue herein (see Finding of Fact "2") specified the various withholding tax periods involved as well as due dates for filing and payment of the taxes. The reason for assessment in each instance was listed as late filing and nonpayment of tax due for each particular period. The printouts further specified the tax due for each period (broken down to reflect New York State and New York City base amounts), periodic additions for accrued penalty and interest and a statement that no adjustments had been made or payments on any of the assessments received, as of the date of the printouts (December 9, 1980).

10. Petitioners assert that certain payments were made against V & D's liability and that credit was not given for these payments.

11. Petitioners introduced in evidence a worksheet prepared by their accountant. The worksheet indicated that V & D's liabilities for withholding taxes for the period January 1, 1975 to June 30, 1979 was \$38,231.00. The schedule did not contain any penalty or interest computations as assessed by the Audit Division. Included in the worksheet was a schedule of payments asserted to have been made against the liabilities in the amount of \$38,340.00. Petitioners introduced in evidence checks, vouchers and letters indicating total payments of \$8,668.19 were made against V & D's liabilities for withholding

tax. No other evidence was submitted to substantiate the balance of the asserted payments. Included in the liability of \$38,231.00 was the amount of the penalty the Audit Division is asserting against petitioners.

12. Petitioner Anthony Esposito testified that he and petitioner Doris Esposito were officers of V & D and were responsible for the payment of its withholding taxes during the periods at issue. Petitioners do not contest the existence of outstanding liability for withholding tax owed by V & D, but rather contest only the amount of the outstanding liability (as forming the basis for the amount of the deficiencies asserted against petitioners).

13. Mr. Esposito testified further that prompt payment (within twenty days of submission of V & D's bill) was not consistently made by the City of New York to V & D, and also that the entire school bus industry in New York City was afflicted with a "wildcat" strike from February 1979 into May 1979. Mr. Esposito stated that during this period (February 1979 through May 1979) V & D had no income at all and that its vehicles were damaged due to vandalism by striking workers. Petitioners assert that these events, coupled with the (alleged) lack of consistently prompt payments by the City of New York, caused hardship to V & D in meeting the continuing obligations of running its business, was the reason for late filing of the withholding tax returns, and upon this cause seek waiver of the deficiencies asserted herein.

#### CONCLUSIONS OF LAW

A. That, as set forth in Finding of Fact "12", petitioners have conceded their liability for withholding taxes of V & D, Inc., and are thus liable to penalties under sections 685(g) and 1312 of the Tax Law and section T46-185.0(g) of the New York City Administrative Code.



B. That penalties and interest assessed against V & D by the Audit Division are not at issue and will not be addressed. Therefore no decision is made as to whether V & D had reasonable cause for late filing of their withholding tax returns.

C. That the only periods and amounts at issue are those that are indicated in Finding of Fact "I", supra. Petitioners have not submitted any evidence to indicate that V & D's withholding tax liability for these periods as asserted by the Audit Division is incorrect. Petitioners have submitted evidence that said tax liability was outstanding on the books of V & D.

D. That the petition of Anthony Esposito and Doris Esposito is hereby denied and the notices of deficiency dated September 29, 1980, as reduced to \$15,007.71 (see Finding of Fact "3"), are sustained.

DATED: Albany, New York

STATE TAX COMMISSION

JUL 15 1983

Edmund Arnold  
PRESIDENT

Francis R. Koenig  
COMMISSIONER

Mark J. Nash  
COMMISSIONER

TA 26 (9-79)

STATE OF NEW YORK  
State Tax Commission  
TAX APPEALS BUREAU  
STATE CAMPUS  
ALBANY, N. Y. 12227

*Handwritten signature*

AUG - 4  
Anthony & Doris Esposito  
2534 East 63rd St.  
Brooklyn, NY 11235

CLAIM CHECK  
NO.

☐ HOLD

DATE

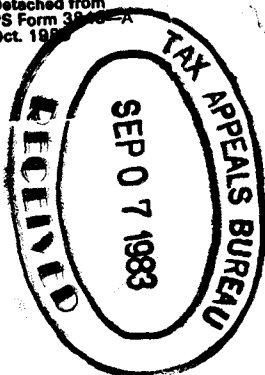
7-20

1ST NOTICE

2ND NOTICE

RETURN

Detached from  
PS Form 3800-A  
Oct. 1982



881

CERTIFIED

P 481 208 059

MAIL

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

July 15, 1983

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2534 East 63rd St.  
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Law Bureau - Litigation Unit  
Building #9 State Campus  
Albany, New York 12227  
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Norman Turk  
and Alan J. Kreitzman, CPA  
67 Harned Rd.  
Commack, NY  
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STATE OF NEW YORK

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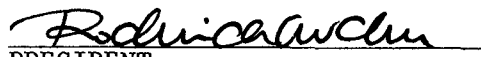
C. That the only periods and amounts at issue are those that are indicated in Finding of Fact "1", supra. Petitioners have not submitted any evidence to indicate that V & D's withholding tax liability for these periods as asserted by the Audit Division is incorrect. Petitioners have submitted evidence that said tax liability was outstanding on the books of V & D.

D. That the petition of Anthony Esposito and Doris Esposito is hereby denied and the notices of deficiency dated September 29, 1980, as reduced to \$15,007.71 (see Finding of Fact "3"), are sustained.

DATED: Albany, New York

JUL 15 1983

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER