

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Richard I. Johnson, Jr. :
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 :
1974. :
_____ :

AFFIDAVIT OF MAILING

State of New York
County of Albany

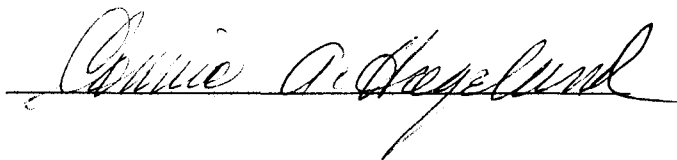
Connie Hagelund, being duly sworn, deposes and says that she is an employee of the State Tax Commission, over 18 years of age, and that on the 28th day of September, 1983, she served the within notice of Decision by certified mail upon Richard I. Johnson, Jr., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

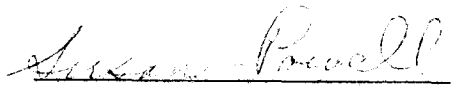
Richard I. Johnson, Jr.
4923 Lakeshore Rd.
Hamburg, NY 14075

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
28th day of September, 1983.





**AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174**

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

September 28, 1983

Richard I. Johnson, Jr.
4923 Lakeshore Rd.
Hamburg, NY 14075

Dear Mr. Johnson:

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 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
Dean M. Drew
Drew & Drew
159 Linwood Ave.
Buffalo, NY 14209
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
RICHARD I. JOHNSON, JR. : DECISION
for Redetermination of a Deficiency or for :
Refund of Personal Income Tax under Article 22 :
of the Tax Law for the Year 1974.

Petitioner, Richard I. Johnson, Jr., 4923 Lakeshore Road, Hamburg, New York 14075, 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 1974 (File No. 20610).

A formal hearing was held before Julius Braun, Hearing Officer, at the offices of the State Tax Commission, State Office Bldg., Buffalo, New York, on April 20, 1982 with all briefs to be submitted by September 1, 1982. Petitioner appeared by Drew & Drew, Esqs. (Dean M. Drew, Esq. of counsel). The Audit Division appeared by Paul B. Coburn, Esq. (Patricia Brumbaugh, Esq., of counsel).

ISSUE

Whether petitioner is liable for the penalty asserted against him pursuant to section 685(g) of the Tax Law with respect to New York State withholding taxes due from Land Site Development Corporation for the year 1974.

FINDINGS OF FACT

1. Land Site Development Corporation ("Land Site") failed to pay New York State personal income tax withheld from the wages of its employees in the amount of \$3,334.52 for the year 1974.

2. On July 25, 1977, the Audit Division issued a Notice of Deficiency against petitioner asserting a penalty equal to the amount of the unpaid New York State withholding tax due from Land Site for the year 1974.

3. Land Site had been formed to develop Enchanted Lake at Napoli, Cattaraugus County, New York. Petitioner was hired by Land Site in the Spring of 1973 to help clear brush at Enchanted Lake. He was paid one hundred and fifty dollars a week. He had to drive some forty miles each day from his home to the work site. He was hired by Stanley Jedrysik, Jr. whose father, Stanley Jedrysik, Sr. owned and operated Land Site and was its sole stockholder. Due to financial and credit problems, in 1973 the Jedrysiks asked petitioner to become president of Land Site so they could use petitioner's good credit rating and he accepted. Petitioner received no increase in pay, owned no stock and did not attend any corporate meetings. On January 25, 1974 petitioner submitted his resignation due to his back problems, a recurrence of an old injury. As president of Land Site, he signed checks, corporation franchise tax reports, and contracts when called upon to do so. He did not make decisions on behalf of the corporation. He neither hired nor fired any employee. Petitioner's father was counsel to the corporation and for this reason he trusted the two Jedrysiks. The senior Jedrysik died July 17, 1974 and the son took over.

4. A report of an Internal Revenue Service district conference held November 10, 1976 with petitioner concerning the withholding and contributions of Land Site due FICA concluded as follows:

"After listening to the taxpayer and upon further investigation, the following facts were disclosed:

- 1) Taxpayer had no control in any manner over any of the decisions involving the corporation be they of a long term or short term nature.
- 2) Control over the day to day decisions rested basically with two individuals: Richard I. Johnson Sr. and Stanley Jedrysik.
- 3) All factors indicated that this taxpayer was a figurehead officer

of the corporation. As such, he should not nor could not be held as a responsible individual for the non-payment of the tax liabilities of the corporation."

CONCLUSIONS OF LAW

A. That petitioner, Richard I. Johnson, Jr., although an officer of Land Site, was not a person required to collect, account for and pay over New York State withholding taxes. Accordingly, he is not liable to a penalty under Section 685(g) of the Tax Law.

B. That the petition of Richard I. Johnson, Jr. is granted and the Notice of Deficiency issued July 25, 1977 is cancelled.

DATED: Albany, New York

STATE TAX COMMISSION

SEP 28 1983

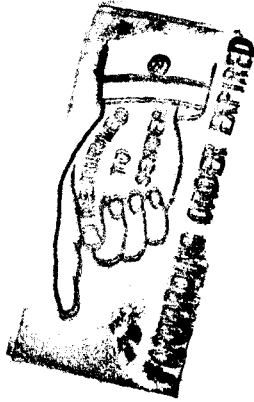
Rodica W. Chen
PRESIDENT

Francis R. Koeng
COMMISSIONER

Mark J. Wells
COMMISSIONER

TA 26 (9-79)

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



Richard I. Johnson, Jr.
4923 Lakeshore Rd.
Hamburg, NY 14075

CERTIFIED

P 481 208 282

MAIL



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

September 28, 1983

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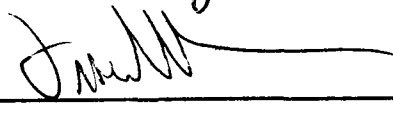
DATED: Albany, New York

SEP 28 1983

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER

 
COMMISSIONER