

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
Sam Ottaiano

:

:

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 1977.

State of New York
County of Albany

David Parchuck, 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 6th day of May, 1983, he served the within notice of Decision by certified mail upon Sam Ottaiano, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Sam Ottaiano
61 Wingan Hauppauge Rd.
Islip, NY 11751

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
6th day of May, 1983.

David Parchuck

Annunzio McLaughlin

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Sam Ottaiano :

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 1977.

State of New York
County of Albany

David Parchuck, 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 6th day of May, 1983, he served the within notice of Decision by certified mail upon Joseph F. Boylan the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Joseph F. Boylan
87 Shergl Cresent
Smithtown, NY 11787

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
6th day of May, 1983.

David Parchuck

James A. Highland

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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

May 6, 1983

Sam Ottaiano
61 Wingan Hauppauge Rd.
Islip, NY 11751

Dear Mr. Ottaiano:

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
Joseph F. Boylan
87 Shergl Cresent
Smithtown, NY 11787
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
SAM OTTAIANO	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1977.	:	

Petitioner, Sam Ottaiano, 61 Wingan Hauppauge Road, Islip, New York 11751, 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 1977 (File No. 28506).

A small claims hearing was held before Allen Caplowaith, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on July 16, 1982 at 10:45 A.M. Petitioner appeared with Joseph F. Boylan. The Audit Division appeared by Paul B. Coburn, Esq. (Irwin Levy, Esq., of counsel).

ISSUE

Whether Ottaiano Sam Meat Market, Inc. and Sam Ottaiano Brentwood Meat Market, Inc., had fully paid the New York State personal income taxes withheld from the wages of their employees for the year 1977, thereby eliminating the penalty asserted against petitioner pursuant to section 685(g) of the Tax Law.

FINDINGS OF FACT

1. Pursuant to a Statement of Deficiency issued to petitioner on August 27, 1979, Ottaiano Sam Meat Market, Inc., 739 Suffolk Avenue, Brentwood, New York 11717, failed to pay over the New York State personal income taxes withheld from the wages of its employees for the period January 1, 1977 through August 31, 1977 in the amount of \$2,728.20. Accordingly, a Notice of Deficiency was

issued under the same date wherein a penalty was asserted against petitioner pursuant to section 685(g) of the Tax Law for an amount equal to said taxes due from Ottaiano Sam Meat Market, Inc. Such penalty was asserted on the grounds that petitioner was a person required to collect, truthfully account for and pay over the New York State withholding taxes of said corporation, and that he willfully failed to do so.

2. Petitioner accepted the responsibility for any unpaid withholding taxes; however, he argued that such taxes were fully paid over to the State for the year at issue herein.

3. The actual computation of the deficiency herein is properly explained in the answer to the perfected petition issued by the Department on March 23, 1982. Paragraph five (5) of such answer alleges affirmatively that:

"Petitioner remitted two (2) sets of Employee Withholding and Tax Statements (IT-2102) for the year in issue showing a total of tax withheld of \$4,822.68. Payments were made in the amount of \$2,094.48, leaving a balance of tax due of \$2,728.20."

4. The withholding taxes at issue were with respect to two entities; Ottaiano Sam Meat Market, Inc., 753 Suffolk Avenue, Brentwood, New York, and Sam Ottaiano Brentwood Meat Market, Inc., Brentwood Road, Brentwood, New York. In computing the deficiency, the Audit Division combined the total taxes withheld and paid by both of said entities since it alleged that both had filed under identification number 11-2034089.

5. The 1977 Reconciliation of Tax Withheld - Monthly Filer, submitted for Ottaiano Sam Meat Market, Inc., reported total taxes withheld of \$2,063.88 and total taxes paid of \$2,094.48. These amounts are substantiated via copies of wage and tax statements, copies of checks submitted in payment and an Income Tax Bureau computer printout.

6. Sam Ottaiano Brentwood Meat Market, Inc. withheld New York State income taxes for 1977 totalling \$2,758.80 pursuant to the wage and tax statements submitted. During the hearing held herein petitioner submitted a series of nine checks issued by said corporation for the periods at issue totaling \$2,733.80. Each check was paid to the order of the New York State Income Tax Bureau. Further, each check was stamped with a seven digit number preceded by the letter W. Such identifying numbers were used by the Income Tax Bureau to designate withholding tax payments. Most of said checks bore the handwritten number 11-2420936, leading to the possibility that payments were credited under this number.

CONCLUSIONS OF LAW

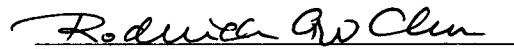
A. That petitioner has sustained his burden of proof required pursuant to section 689(e) of the Tax Law to show that Ottaiano Sam Meat Market, Inc. and Sam Ottaiano Brentwood Meat Market, Inc. have fully paid over the New York State personal income taxes withheld from their employees during 1977. Accordingly, the penalty asserted against petitioner pursuant to section 685(g) of the Tax Law is abated.

B. That the petition of Sam Ottaiano is granted and the Notice of Deficiency dated August 27, 1979 is hereby cancelled.

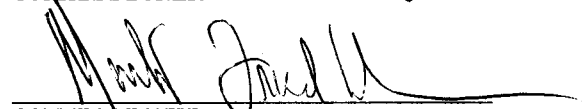
DATED: Albany, New York

STATE TAX COMMISSION

MAY 06 1983


PRESIDENT


COMMISSIONER


COMMISSIONER

TA 26 (9-79)

STATE OF NEW YORK

State Tax Commission

TAX APPEALS BUREAU

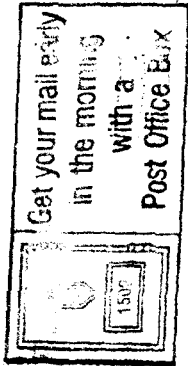
STATE CAMPUS

ALBANY, N. Y. 12227

CERTIFIED

P 481 207 698

MAIL



CLAIM CHECK NO.

100335

☐ HOLD

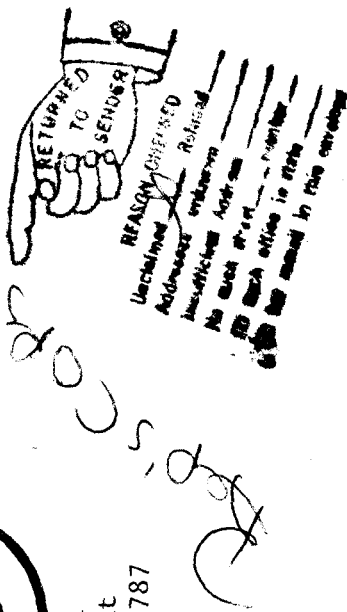
DATE 5/19 Joseph F. Boylan
87 Shergl Cresent
Smithtown, NY 11787

1st NOTICE

2nd NOTICE

RETURN

Checked from Form 3845-A May 1978



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

May 6, 1983

Sam Ottaiano
61 Wingan Hauppauge Rd.
Islip, NY 11751

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

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Joseph F. Boylan
87 Shergl Cresent
Smithtown, NY 11787
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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CONCLUSIONS OF LAW

A. That petitioner has sustained his burden of proof required pursuant to section 689(e) of the Tax Law to show that Ottaiano Sam Meat Market, Inc. and Sam Ottaiano Brentwood Meat Market, Inc. have fully paid over the New York State personal income taxes withheld from their employees during 1977. Accordingly, the penalty asserted against petitioner pursuant to section 685(g) of the Tax Law is abated.

B. That the petition of Sam Ottaiano is granted and the Notice of Deficiency dated August 27, 1979 is hereby cancelled.

DATED: Albany, New York

MAY 06 1983

STATE TAX COMMISSION

Rodriguez Avila
PRESIDENT

Francis R. Krone
COMMISSIONER

Mark J. Dill
COMMISSIONER