

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition  
of

Amile A. Addy, Sr.

:

:

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :  
of a Determination or Refund of Personal Income :  
Tax under Article 22 of the Tax Law for the Period :  
1976 & 1978.

State of New York }

ss.:

County of Albany }

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 9th day of August, 1984, he served the within notice of Decision by certified mail upon Amile A. Addy, Sr., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Amile A. Addy, Sr.  
22 Biscayne Dr.  
Lancaster, NY 14086

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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 August, 1984.

David Parchuck

James A. [Signature]

Authorized to administer oaths  
pursuant to Tax Law section 174

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

August 9, 1984

Amile A. Addy, Sr.  
22 Biscayne Dr.  
Lancaster, NY 14086

Dear Mr. Addy:

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, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only 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: Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
	:	
AMILE A. ADDY, SR.	:	DECISION
	:	
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Years 1976 and 1978.	:	

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Petitioner, Amile A. Addy, Sr., 22 Biscayne Drive, Lancaster, New York 14086, 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 and 1978 (File No. 32382).

A small claims hearing was held before James Hoefer, Hearing Officer, at the offices of the State Tax Commission, State Office Building, 65 Court Street, Part VI, Buffalo, New York, on March 22, 1984 at 9:15 A.M., with all briefs to be submitted by April 22, 1984. Petitioner appeared pro se. The Audit Division appeared by John P. Dugan, Esq. (Deborah Dwyer, Esq., of counsel).

#### ISSUE

Whether petitioner was a person, as defined in section 685(n) of the Tax Law, under a duty to collect, truthfully account for and pay over the New York State withholding taxes of Javco Plastic Industries, Inc. and, if such a person, was his failure to collect, truthfully account for and pay over said withholding taxes willful.

#### FINDINGS OF FACT

1. On June 30, 1980, the Audit Division issued a Statement of Deficiency to petitioner, Amile A. Addy, Sr., imposing a penalty, pursuant to section 685(g) of the Tax Law, equal in amount to the unpaid New York State withholding

taxes due and owing from Javco Plastic Industries, Inc. (hereinafter "Javco"). The aforementioned Statement of Deficiency was issued on the grounds that petitioner was a person required to collect, truthfully account for and pay over the withholding taxes due and owing from Javco and that he willfully failed to do so. The withholding tax periods in question, as listed on the Statement of Deficiency, were October 1, 1976 through December 31, 1976 and August 1, 1978 through August 31, 1978 and the alleged withholding taxes not paid by Javco amounted to \$2,392.94 and \$785.49, respectively. Based on the Statement of Deficiency, the Audit Division, on June 30, 1980, issued a Notice of Deficiency to petitioner for the years 1976 and 1978 in the total sum of \$3,178.43.

2. On June 1, 1976, petitioner accepted the position of president and chief operating officer of Javco. Prior to this date, petitioner had not been associated with Javco. At the time that petitioner became president of Javco there existed an undisclosed amount of New York State withholding taxes which remained unpaid for periods prior to June 1, 1976.

3. As president and chief operating officer of Javco, petitioner was intimately involved in its day-to-day operation. Mr. Addy was authorized to and in fact did sign corporate checks, hire and fire employees, direct payment to creditors and sign corporate tax returns. As the result of a foreclosure by the Marine Midland Bank of Western New York, Javco ceased doing business on or about September 1, 1978.

4. Petitioner maintains that his failure to remit New York State withholding taxes for the periods October 1, 1976 through December 31, 1976 and August 1, 1978 through August 31, 1978 was not intentional. Javco's general ledger for the period that petitioner was president and chief operating officer (June 1,

1976 to September 1, 1978), indicates that during said period Javco accrued a total liability for New York State withholding taxes of \$23,340.21. The general ledger also reveals that during this same period, Javco made withholding tax payments of some \$29,097.29. The excess of payments over the accrued liability represents payments made by Javco for taxes due for periods prior to June 1, 1976.

5. Javco was experiencing serious financial problems both prior to and during the period of petitioner's association with said firm. Javco, on various occasions, filed withholding tax returns without payment of the tax due shown on said returns and petitioner concedes that Javco in all likelihood did not make payment of the withholding taxes for the periods shown on the Statement of Deficiency. Petitioner argues that his actions cannot be construed to be willful since, during the period of his tenure as president and chief operating officer of Javco, the company actually remitted to New York State funds in excess of its accrued withholding tax liability.

6. At the hearing held herein, the Audit Division submitted an accounts receivable system computer printout (introduced into evidence as Department's Exhibit "J"), which indicated that withholding taxes due from Javco for the period August 16, 1978 through August 31, 1978 were reduced by \$61.96. Said reduction was not reflected in the Notice of Deficiency dated June 30, 1980.

#### CONCLUSIONS OF LAW

A. That petitioner was president and chief operating officer of Javco with responsibility for its day-to-day operations. Mr. Addy signed corporate checks and tax returns, hired and fired employees and had control over payment of creditors. Petitioner was a person under a duty to collect, truthfully

account for and pay over the New York State withholding taxes of Javco during the periods in question [Tax Law section 685(n)].

B. That petitioner's failure to collect, truthfully account for and pay over Javco's withholding taxes for the periods at issue was willful. While petitioner's efforts to pay off Javco's withholding tax liability for periods prior to June 1, 1976 were noteworthy, said actions did not relieve him of his responsibility to collect and pay over withholding taxes for then current periods. Accordingly, petitioner is subject to the penalty imposed pursuant to section 685(g) of the Tax Law as a person who willfully failed to collect, truthfully account for and pay over withholding taxes due from Javco.


C. That pursuant to Finding of Fact "6", supra, the Notice of Deficiency dated June 30, 1980 is to be reduced by \$61.96.

D. That the petition of Amile A. Addy, Sr. is granted to the extent indicated in Conclusion of Law "C", supra; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

STATE TAX COMMISSION

AUG 09 1984

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER

