

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Vincent Campisi : 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 and New York :  
City Personal Income Tax under Chapter 46, Title T :  
of the Administrative Code of the City of New York :  
for the Period 7/1/77-12/31/77.

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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 18th day of January, 1984, he served the within notice of Decision by certified mail upon Vincent Campisi, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Vincent Campisi  
259 Pleasant View Ct.  
Copiague, NY 11726

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  
18th day of January, 1984.

David Parchuck

James A. Laguerre  
pursuant to Tax Law section 174

Authorized to administer oaths

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

January 18, 1984

Vincent Campisi  
259 Pleasant View Ct.  
Copiague, NY 11726

Dear Mr. Campisi:

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, 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 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	:	
VINCENT CAMPISI	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of New York State Personal Income Tax	:	
under Article 22 of the Tax Law and New York	:	
City Personal Income Tax under Chapter 46,	:	
Title T of the Administrative Code of the City	:	
of New York for the Year 1977.	:	

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Petitioner, Vincent Campisi, 259 Pleasant View Ct., Copiague, New York 11726, filed a petition for redetermination of a deficiency or for refund of New York State personal income tax under Article 22 of the Tax Law and New York City personal income tax under Chapter 46, Title T of the Administrative Code of the City of New York for the year 1977 (File No. 35327).

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 May 11, 1983 at 1:15 P.M. with all briefs to be submitted by June 11, 1983. Petitioner appeared pro se. The Audit Division appeared by John P. Dugan, Esq. (Angelo Scopellito, Esq., of counsel).

ISSUE

Whether petitioner, Vincent Campisi, is subject to penalties under section 685(g) of the Tax Law and section T46-185.0(g) of the Administrative Code of the City of New York, as a person who willfully failed to collect, truthfully account for and pay over the New York State and New York City withholding taxes due from City Wide Foundation Maintenance.

FINDINGS OF FACT

1. City Wide Foundation Maintenance (City Wide), 89-02 Sutphin Blvd., Jamaica, New York 11435, failed to pay over the New York State and New York City personal income taxes withheld from the wages of its employees for the period July 1, 1977 through December 31, 1977.

2. On June 29, 1981, the Audit Division issued a Statement of Deficiency in conjunction with a Notice of Deficiency against Vincent Campisi (hereinafter petitioner) wherein penalties were asserted pursuant to section 685(g) of the Tax Law and section T46-185.0(g) of the Administrative Code of the City of New York for amounts equal to the New York State and New York City withholding taxes due from City Wide for said period.

3. The total deficiency asserted for said period was \$910.25. Such amount, pursuant to a reconciliation of tax withheld marked "Dummy Return", was comprised of a New York State deficiency of \$647.83 and a New York City deficiency of \$262.42. Said amounts were estimated by the Audit Division since City Wide had not filed a return for the period at issue.

4. During the period at issue petitioner was president of City Wide, a company engaged in termite extermination activities. Inclusive of petitioner, City Wide had three officers, each of which owned one third of the outstanding stock. Petitioner contended that he was a salesman and job supervisor while one of the other officers was responsible for the payroll and other financial matters.

5. Petitioner contended that the estimated deficiency of \$910.25 is overstated. He was unable to produce records to support such contention since the records, he claimed, were in the hands of the other officers who were unwilling to part with them.

6. Petitioner, who had authority to sign checks, did not deny that he was a person responsible for the collection and payment of the withholding taxes at issue, however, he argued that he should only be liable for one third of the deficiency since he sold his interest in City Wide in 1979 and during the period at issue there were three officers, each of which held an equal interest in the company.

CONCLUSIONS OF LAW

A. That section 685(g) of the Tax Law and section T46-185.0(g) of the Administrative Code of the City of New York provide that:

"Any person required to collect, truthfully account for and pay over the tax imposed by this article/part who willfully fails to collect such tax or truthfully account for and pay over such tax or willfully attempts in any manner to evade or defeat the tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty equal to the total amount of the tax evaded, or not collected, or not accounted for and paid over."

B. That pursuant to section 685(n) of the Tax Law and section T46-185.0(n) of the Administrative Code of the City of New York the term "person" includes an individual, corporation or partnership or an officer or employee of any corporation (including a dissolved corporation), or a member or employee of any partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

C. That petitioner was a person who willfully failed to collect, truthfully account for, and pay over the New York State and New York City withholding taxes of City Wide for the period at issue herein.

D. That the petition of Vincent Campisi is denied and the Notice of Deficiency dated June 29, 1981 is hereby sustained.

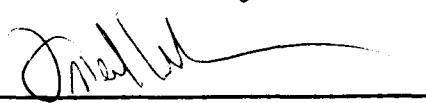
DATED: Albany, New York

STATE TAX COMMISSION

JAN 18 1984

  
PRESIDENT

  
COMMISSIONER

   
COMMISSIONER