

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Sudhakar Rao Perala :

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 :
1/1/79-12/31/79. :

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 31st day of December, 1984, he served the within notice of Decision by certified mail upon Sudhakar Rao Perala, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Sudhakar Rao Perala
50 Sturbridge Lane
Williamsville, NY 14221

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
31st day of December, 1984.

David Parchuck

Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Sudhakar Rao Perala :
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 1/1/79-12/31/79. :
:

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 31st day of December, 1984, he served the within notice of Decision by certified mail upon Michael Likoudis, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Michael Likoudis
Cellino, Likoudis, Bernstein & Abbarno
311 Brisbane Building
Buffalo, NY 14203

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 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
31st day of December, 1984.

David Parchuck

Authorized to administer oaths
pursuant to Tax Law section 174

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

December 31, 1984

Sudhakar Rao Perala
50 Sturbridge Lane
Williamsville, NY 14221

Dear Mr. Rao Perala:

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: Petitioner's Representative
Michael Likoudis
Cellino, Likoudis, Bernstein & Abbarno
311 Brisbane Building
Buffalo, NY 14203
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
SUDHAKAR RAO PERALA	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1979.	:	

Petitioner, Sudhakar Rao Perala, 50 Sturbridge Lane, Williamsville, New York 14221, 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 1979 (File No. 37912).

A formal hearing was held before Arthur Bray, Hearing Officer, at the offices of the State Tax Commission, 65 Court Street, Buffalo, New York on June 27, 1984. Petitioner appeared by Cellino, Likoudis, Bernstein & Abbarno (Michael Likoudis, Esq., of counsel). The Audit Division appeared by John P. Dugan, Esq. (Deborah J. Dwyer, 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 Lackawanna Physicians Group, P.C.

FINDINGS OF FACT

1. Lackawanna Physicians Group, P.C. ("Physicians Group") failed to pay New York State personal income tax withheld from the wages of its employees in the amount of \$12,744.63.

2. On May 24, 1982 the Audit Division issued a Notice of Deficiency and Statement of Deficiency to petitioner asserting a penalty in the amount of unpaid withholding tax due from Physicians Group.

3. Physicians Group was a corporation which operated an emergency room in a hospital. In January, 1974 petitioner began working for Physicians Group as a physician on a part-time basis. In 1975 petitioner commenced full-time employment for Physicians Group. As a full-time employee, petitioner was primarily involved in arranging the work schedules of the physicians working in the emergency room.

4. In June, 1978 petitioner returned to part-time employment and started receiving an hourly wage. As a part-time employee, petitioner was not a corporate officer. In addition, he did not have any responsibility with respect to tax returns or possess any authority to sign checks. Further, as a part-time employee, petitioner did not have access to the corporate books, did not have the authority to hire and fire employees, and was not aware of the day-to-day operations of the corporation. Petitioner did not know that taxes withheld from the wages of employees were not paid over to New York State until he received the Notice of Deficiency.

5. During 1979 approximately twenty percent of petitioner's income from practicing medicine was received from Physicians Group. Petitioner worked less than ten hours a week for Physicians Group during the years in issue.

6. Physicians Group had a contract with Queen City Professional Service, Inc. ("Queen City"). The contract provided that Queen City would take care of Physicians Group's records and payroll.

7. The president and principal stockholder of Physicians Group was Sutap Aroonskool, M.D. Dr. Aroonskool managed the corporation on a daily basis and had the authority to hire and fire employees.

8. In 1980 petitioner terminated his association with Physicians Group.

CONCLUSIONS OF LAW

A. That where a person is required to collect, truthfully account for and pay over withholding taxes and willfully fails to do so, section 685(g) of the Tax Law imposes on such person "...a penalty equal to the total amount of tax evaded, not collected, or not accounted for and paid over".

B. That section 685(n) of the Tax Law defines a person, for purposes of section 685(g) of the Tax Law, to include:

"...an individual, corporation or partnership or an officer or employee of any corporation...who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs."

C. That whether petitioner was a person required to collect, truthfully account for and pay over withholding taxes during the period in issue is a question of fact (Matter of McHugh v. State Tax Comm., 70 A.D.2d 987; Matter of MacLean v. State Tax Comm., 69 A.D.2d 951, aff'd 49 N.Y.2d 920). Factors which are relevant to the determination include whether the individual signed the company's tax returns and possessed the right to hire and fire employees (Matter of Amengual v. State Tax Comm., 95 A.D.2d 949, 950; Matter of Malkin v. Tully, 65 A.D.2d 228). Other factors considered are the amount of stock owned, the authority to pay corporate obligations and the individual's official duties (Matter of Amengual v. State Tax Comm., supra).

D. That in view of the evidence that petitioner did not have any authority to sign checks, did not have any involvement with the preparation of tax returns, did not have any authority to either hire or fire employees, and had no involvement with the payroll of Physicians Group during the year at issue,

petitioner was not a person required to collect, truthfully account for and pay over withholding taxes within the meaning of section 685(g) of the Tax Law.

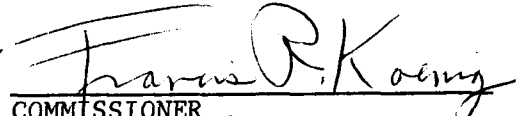
E. That the petition of Sudhakar Rao Perala is granted and the Notice of Deficiency issued May 24, 1982 is cancelled.

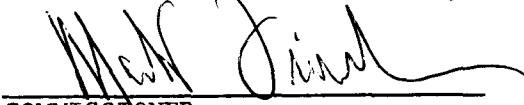
DATED: Albany, New York

STATE TAX COMMISSION

DEC 31 1984


PRESIDENT


COMMISSIONER


COMMISSIONER