

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Federico Ramos-Yordan, M.D. :

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 Year :  
1976. :

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 23rd day of November, 1984, he served the within notice of Decision by certified mail upon Federico Ramos-Yordan, M.D., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Federico Ramos-Yordan, M.D.  
5 Old Farm Court  
West Nyack, NY 10994

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  
23rd day of November, 1984.

David Parchuck

Conrad A. [Signature]

Authorized to administer oaths  
pursuant to Tax Law section 174

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

November 23, 1984

Federico Ramos-Yordan, M.D.  
5 Old Farm Court  
West Nyack, NY 10994

Dear Dr. Ramos-Yordan:

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  
FEDERICO RAMOS-YORDAN, M.D.  
for Redetermination of a Deficiency or for  
Refund of Personal Income Tax under Article 22  
of the Tax Law for the Year 1976.

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DECISION

Petitioner, Federico Ramos-Yordan, M.D., 5 Old Farm Court, West Nyack, New York 10994, 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 1976 (File No. 32301).

A formal hearing was held before Doris E. Steinhardt, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on April 12, 1984 at 1:00 P.M. Petitioner appeared pro se. The Audit Division appeared by John P. Dugan, Esq. (Irwin Levy, Esq., of counsel).

ISSUE

Whether petitioner was a person responsible for collecting and paying over taxes withheld from the wages of employees of North Rockland Health Center, Inc., who willfully failed to fulfill this responsibility, and is therefore liable for the penalty imposed under section 685(g) of the Tax Law.

FINDINGS OF FACT

1. On November 26, 1979, the Audit Division issued to petitioner, Federico Ramos-Yordan, M.D., a Statement of Deficiency and a Notice of Deficiency, asserting a penalty equal to the New York State withholding tax of North Rockland Health Center, Inc. which was due and unpaid for the period March 1 through December 31, 1976 in the amount of \$25,745.36.

2. On or about January 31, 1977, North Rockland Health Center, Inc. ("NRHC") filed a Reconciliation of Personal Income Tax Withheld, reflecting tax withheld from employee wages during 1976 in the amount of \$29,527.69, and remitted to the Audit Division \$3,782.33. On November 10, 1978, the Audit Division issued to NRHC a Notice and Demand for Unpaid Withholding Tax Due, assessing the excess of the tax withheld over the tax remitted, in the amount of \$25,745.36, plus penalty and interest.

3. NRHC, a not-for-profit corporation, provided health services in 29 specialty areas to the community of Haverstraw, New York. The building in which the center operated was owned by North Rockland Health Center Realty, Inc. ("Realty"). Petitioner owned five percent of the stock of Realty.

4. The combined first meeting of members and directors of NRHC was conducted on March 19, 1975. The following persons were elected members of the board of directors: Michael Gionatti, Alan Ritter, Jerry Schulman, Jerry Mastromarino, Raphael Mertz, Michael Prendergast, Dr. Jasper Forestiere and Milton Bondurant. The board then elected the following officers: President - Arlington Robinson; First Vice-President - Raphael Mertz; Second Vice-President - Dr. Martin Lorin; Secretary - petitioner; and Treasurer - Alan Ritter. By resolution of the board, it was determined that all checks drawn on the corporate account and all contracts entered into on behalf of NRHC were to be signed by two officers.

5. At a meeting of the board of directors on May 8, 1975, petitioner was designated medical director of NRHC, at a salary of \$50,000.00 per annum plus \$10,000.00 per year to be applied against his medical malpractice insurance premiums. His specific responsibility was to oversee all medical matters and to report to the board thereon. He recruited physicians for the center,

evaluated diagnostic screening charts and chaired the committees on utilization and quality control. In addition, as a surgeon and general practitioner, petitioner performed surgery and treated patients.

6. Sometime during 1976, NRHC began to experience financial difficulties, and funds were unavailable to pay petitioner's malpractice insurance premium. As a result, on October 28, 1976, he tendered his resignation as medical director, surgeon and general practitioner at NRHC and requested relief from "any responsibility as cosigner of bonds, loans and executive designation or official duties". The board refused to accept his resignation, and petitioner continued his association with NRHC.

7. The center's fiscal problems persisted. At a meeting of the board on April 12, 1977, petitioner presented a proposal designed to decrease NRHC's expenses in relation to its medical staff. He suggested, among other things: (a) the elimination of sub-specialists, with their use confined to a consultant basis; (b) the reduction of pathology department hours to 3 hours per day, 4 days per week; (c) the elimination of diagnostic screening; and (d) the elimination of one laboratory technician position. The board adopted many of the measures he advised. At the same meeting and apparently after petitioner's departure, the board approved a motion to arrange a conference between the Finance Committee and petitioner to discuss a reduction in his salary.

The Finance Committee convened a week later on April 19 and recommended that petitioner's salary be diminished by \$20,000.00. By motion voted on and carried, the Committee also empowered petitioner "to hire back the sub-specialists on an 'as needed' basis with advice to the Board".

8. By letter to the chairman of the board dated April 21, 1977, petitioner submitted his resignation, effective May 13, 1977, rather than accept the cut

in salary. The board of directors accepted his resignation at its meeting on April 21, 1977.

9. Petitioner never signed checks on the NRHC corporate account. He did not hire or discharge medical staff members except upon the specific instructions of and authority granted by the board of directors.

10. By letter dated July 2, 1981, the Acting Associate Chief of the Internal Revenue Service Appeals Office advised petitioner that the penalty asserted against him for the unpaid federal withholding taxes of NRHC for the third and fourth quarters of 1976 and the first and second quarters of 1977 had been cancelled.

#### CONCLUSIONS OF LAW

A. That Tax Law section 685, subdivision (g) imposes on any person required to collect, account for and pay over the tax imposed by Article 22, who willfully fails to do so, a penalty equal to the amount of the tax. Subdivision (n) of Tax Law section 685 defines such a "person" to include, inter alia, "an officer or employee of any corporation...who...is under a duty to perform the act in respect of which the violation occurs".


B. That petitioner's holding of corporate office is alone insufficient to deem him a responsible person under Tax Law section 685(n). See Matter of Amengual v. State Tax Comm., 95 A.D.2d 949 (3d Dept. 1983). His duties as medical director were circumscribed and did not embrace the collection and remittance of withholding taxes or, for that matter, any decision-making about the financial affairs of the corporation. He is accordingly not liable for the penalty asserted against him.

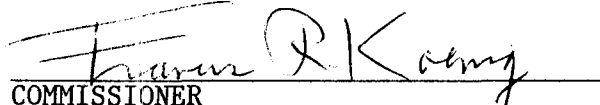
C. That the petition of Federico Ramos-Yordan, M.D. is granted, and the Notice of Deficiency issued on November 26, 1979 is cancelled.


DATED: Albany, New York

STATE TAX COMMISSION

NOV 23 1984

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER