

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Angelo Sciabarassi :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or for Refund :
of Personal Income Tax under Article 22 of the Tax
Law and Chapter 46, Title T of the Administrative :
Code of the City of New York for the Years 1978
and 1980. :

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 26th day of July, 1984, he served the within notice of Decision by certified mail upon Angelo Sciabarassi, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Angelo Sciabarassi
44 Spruce Ave.
Bethpage, NY 11714

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
26th day of July, 1984.

David Parchuck

Conrad A. Haplan
Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Angelo Sciabarassi : AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or Revision :
of a Determination or Refund of NYC & Personal :
Income Tax under Article 22 & 30 of the Tax Law :
for the Years 1978 & 1980.

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 26th day of July, 1984, he served the within notice of Decision by certified mail upon Peter R. Newman, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Peter R. Newman
400 Jericho Turnpike
Jericho, NY 11753

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
26th day of July, 1984.

David Parchuck

William J. Hayward
Authorized to administer oaths
pursuant to Tax Law section 174

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

July 26, 1984

Angelo Sciabarassi
44 Spruce Ave.
Bethpage, NY 11714

Dear Mr. Sciabarassi:

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 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
Peter R. Newman
400 Jericho Turnpike
Jericho, NY 11753
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
ANGELO SCIABARASSI	:	DECISION
	:	
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law and Chapter 46, Title T of the	:	
Administrative Code of the City of New York for	:	
the Years 1978 and 1980.	:	

Petitioner, Angelo Sciabarassi, 44 Spruce Avenue, Bethpage, New York 11714, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law and Chapter 46, Title T of the Administrative Code of the City of New York for the years 1978 and 1980 (File No. 37397).

A formal hearing was held before Daniel J. Ranalli, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 25, 1984 at 11:00 A.M., with additional information to be submitted by February 25, 1984. Petitioner appeared pro se. The Audit Division appeared by John P. Dugan, Esq. (Irving Atkins, Esq., of counsel).

ISSUE

Whether petitioner is liable to a penalty imposed for the willful failure to collect and pay over withholding taxes of Casco Electric Corporation.

FINDINGS OF FACT

1. On June 29, 1981, the Audit Division issued a Notice of Deficiency along with a Statement of Deficiency imposing a penalty pursuant to section 685(g) of the Tax Law against petitioner, Angelo Sciabarassi, as a person required to collect, truthfully account for and pay over withholding taxes of

Casco Electric Corporation ("Casco") in the amount of \$158.15 for the year 1978 and \$1,065.01 for the year 1980 for a total of \$1,223.16. On November 30, 1981, the Audit Division issued a Notice of Deficiency along with a Statement of Deficiency pursuant to section 685(g) of the Tax Law against petitioner in the amount of \$13,633.52 for the year 1980.

2. Petitioner was president of Casco, an electrical contracting company, during the period in issue. For the withholding tax period December 1, 1978 through December 31, 1978, petitioner filed a monthly Reconciliation of Tax Withheld (IT-2103) on behalf of Casco indicating that \$2,465.70 in New York State tax and \$44.25 in New York City tax was withheld. Of the \$2,509.95 total tax withheld, only \$2,351.80 was remitted, resulting in a shortage of \$158.15.

3. On September 22, 1980, Casco filed a Petition in Bankruptcy under Chapter 7 of the United States Code in the United States Bankruptcy Court for the Eastern District of New York. For tax year 1980, the Department of Taxation and Finance received an unsigned, undated Form IT-2103 indicating that total tax withheld for the year was \$28,608.98, of which \$13,910.45 had been paid.¹ No tax was remitted with the form and the Department filed a claim with the Bankruptcy Court on September 24, 1981 for the \$14,698.53 outstanding for 1980 and the \$158.15 outstanding for 1978. No payments had been received as of the hearing date.

4. Petitioner did not contest the amounts in issue. He explained that he did not have enough money, personally, to cover the deficiency and he had hoped the Bankruptcy Court would collect enough funds from Casco to satisfy its tax

¹ Petitioner believes that the IT-2103 came from a referee or clerk of the Bankruptcy Court since he had turned over all of Casco's records containing such information to the court upon Casco's filing for bankruptcy.

obligations. Petitioner feels that the Audit Division should attempt to obtain the taxes due from Casco prior to imposing the penalty on him.

CONCLUSIONS OF LAW

A. That section 685(g) of the Tax Law provides that any person required to collect, truthfully account for and pay over withholding taxes, who willfully fails to collect, account for and pay over such taxes, will be liable to a penalty equal to the total amount of the tax not collected, accounted for and paid over. Section T46-185.0(g) of Chapter 46, Title T of the Administrative Code of the City of New York contains a similar provision.

B. That the penalty imposed under section 685(g) of the Tax Law is separate and independent of the corporation's liability for the unpaid taxes and the fact that the Bankruptcy Court may not have finalized payments to Casco's creditors does not preclude the Audit Division from imposing a 685(g) penalty equal to unpaid withholding taxes against petitioner, individually (see Yellin v. New York State Tax Commission, 81 A.D.2d 196).

C. That the petition of Angelo Sciabarassi is denied and the notices of deficiency issued June 29, 1981 and November 30, 1981 are sustained.

DATED: Albany, New York

STATE TAX COMMISSION

JUL 26 1984

Richard W. Cline
PRESIDENT

Francis R. Koehn
COMMISSIONER

[Signature]
COMMISSIONER