

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Paul L. Maguire :
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 Years :
1977 - 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 6th day of February, 1985, he served the within notice of Decision by certified mail upon Paul L. Maguire, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Paul L. Maguire
9063 Jennings Rd.
Eden, NY 14057

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
6th day of February, 1985.

David Parchuck

David R. H. H. H.
Authorized to administer oaths
pursuant to Tax Law section 174

STATE TAX COMMISSION

In the Matter of the Petition
of
Paul L. Maguire
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 Years
1977 - 1980.

AFFIDAVIT OF MAILING

State of New York :
County of Albany : ss.:

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 6th day of February, 1985, he served the within notice of Decision by certified mail upon Jack L. Getman, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Jack L. Getman
Goldman, Costa & Getman
705 Brisbane Bldg.
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
6th day of February, 1985.

Daniel Paschack

James A. Haglund
Authorized to administer oaths
pursuant to Tax Law section 174

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

February 6, 1985

Paul L. Maguire
9063 Jennings Rd.
Eden, NY 14057

Dear Mr. Maguire:

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
Jack L. Getman
Goldman, Costa & Getman
705 Brisbane Bldg.
Buffalo, NY 14203
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

PAUL L. MAGUIRE

DECISION

for Redetermination of a Deficiency or for
Refund of Personal Income Tax under Article 22
of the Tax Law for the Years 1977 through 1980.

Petitioner, Paul L. Maguire, 9063 Jennings Road, Eden, New York 14057, 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 1977 through 1980 (File No. 37969).

A formal hearing was held before Dennis M. Galliher, Hearing Officer, at the offices of the State Tax Commission, 65 Court Street, Buffalo, New York on August 20, 1984 at 2:45 P.M. Petitioner appeared by Goldman, Costa and Getman, Esqs. (Jack L. Getman, Esq., of counsel). The Audit Division appeared by John P. Dugan, Esq. (Deborah Dwyer, Esq., of counsel).

ISSUE

Whether petitioner was a person required to collect, truthfully account for and pay over withholding tax with respect to Sestak & Maguire's Arches, Inc., and willfully failed to do so, thus becoming liable for a penalty under section 685(g) of the Tax Law.

FINDINGS OF FACT

1. On February 22, 1982, the Audit Division issued to petitioner, Paul L. Maguire, a Notice of Deficiency asserting tax due in the amount of \$5,993.17. In conjunction with this Notice of Deficiency, petitioner also received a Statement of Deficiency dated February 22, 1982, indicating that the asserted

deficiency represented a penalty against petitioner equal to the unpaid withholding taxes owed by Sestak & Maguire's Arches, Inc., more specifically detailed as to periods and amounts as follows:

<u>Withholding Tax Period</u>	<u>Amount</u>
11/01/77 - 12/31/77	\$ 592.26
04/01/78 - 06/30/78	660.91
01/01/79 - 12/31/79	3,600.00
01/01/80 - 04/04/80	1,140.00
Total	<u>\$5,993.17</u>

2. Petitioner was president and, for the latter portion of the periods at issue herein, sole shareholder of Sestak & Maguire's Arches, Inc., a restaurant and tavern located at 2766 Elmwood Avenue, Kenmore, New York.

3. Petitioner does not contest his status as a person responsible for collecting, accounting for and paying over withholding taxes on behalf of Sestak and Maguire's Arches, Inc. during the period of its existence, as contemplated under section 685(g) of the Tax Law. Similarly, petitioner concedes and does not contest his responsibility for amounts due for the periods November 1, 1977 through December 31, 1977 (\$592.26), April 1, 1978 through June 30, 1978 (\$660.91), and for the period January 1, 1979 through December 7, 1979. However, petitioner contests the amounts asserted as due for any period of time after December 7, 1979.

4. By his credible testimony at the hearing, and by documentary evidence, petitioner has established that Sestak & Maguire's Arches, Inc. ceased doing business as of December 7, 1979, that no wages or salaries were paid nor were there any employees after said date, that on or about January 16, 1980 Sestak & Maguire's Arches, Inc. released to its landlord any claim of tenancy under its lease of the business' premises (2764-2768 Elmwood Avenue) and that both petitioner and Sestak & Maguire's Arches, Inc. filed for bankruptcy on or about February 4, 1980.

5. Petitioner asserted that amounts of withholding tax due, particularly after September, 1979, are estimated amounts based at \$300.00 per month. Petitioner testified that the number of employees and the actual amount of withholding tax decreased steadily after September, 1979, and ceased entirely as of December 7, 1979. Petitioner sought (from his former accountant), but was unable to obtain the actual amounts of withholding tax involved for this period.

CONCLUSIONS OF LAW

A. That petitioner has admitted responsibility within the meaning and intent of subsections (g) and (n) of section 685 of the Tax Law for unpaid withholding taxes due from Sestak & Maguire's Arches, Inc. during those periods at issue prior to its closing on December 7, 1979. Given the lack of information as to actual withholding tax due for 1979, it is appropriate to use the \$300.00 per month amount estimated as due for such year in calculating petitioner's liability for 1979 up to the December 7, 1979 cessation of business. Accordingly, since the business ceased to operate as of December 7, 1979, the asserted deficiency for 1979 is to be reduced by \$225.00 (3/4 month of December not doing business times \$300.00 per month estimated withholding tax liability for 1979), and the asserted deficiency for 1980 is to be cancelled.

B. That the petition of Paul L. Maguire is granted to the extent indicated in Conclusion of Law "A", but is in all other respects denied and the Notice of Deficiency dated February 22, 1982, as modified in accordance herewith, is sustained.

DATED: Albany, New York

FEB 06 1985

STATE TAX COMMISSION

Richard W. Clem
PRESIDENT

James P. Koenig
COMMISSIONER

John J. J. J. J.
COMMISSIONER