

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Balakrishnan Romanathan : AFFIDAVIT OF MAILING
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 Period July 1, 1979 :
through December 31, 1979. :

State of New York :

ss.:

County of Albany :

David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 28th day of April, 1986, he/she served the within notice of Decision by certified mail upon Balakrishnan Romanathan the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Balakrishnan Romanathan
171 Harris Drive
Oceanside, New York 11572

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
28th day of April, 1986.

David Parchuck

Janet M. Snay
Authorized to administer oaths
pursuant to Tax Law section 174

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

April 28, 1986

Balakrishnan Romanathan
171 Harris Drive
Oceanside, New York 11572

Dear Mr. Romanathan:

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 and Chapter 46, Title T of the Administrative Code of the City of New York, 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
Audit Evaluation Bureau
Assessment Review Unit
Building #9, State Campus
Albany, New York 12227
Phone # (518) 457-2086

Very truly yours,

STATE TAX COMMISSION

cc: Taxing Bureau's Representative

STATE OF NEW YORK

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BALAKRISHNAN ROMANATHAN	:	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 Period July 1, 1979 through	:	
December 31, 1979.	:	

Petitioner, Balakrishnan Romanathan, 171 Harris Drive, Oceanside, New York 11572, 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 period July 1, 1979 through December 31, 1979 (File No. 57670).

A hearing was held before James Hoefer, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 14, 1986 at 9:15 A.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 required to collect, truthfully account for and pay over the New York State and City withholding taxes of Quadratach Research Corp. and who willfully failed to do so and, therefore, is subject to a penalty equal to such unpaid withholding taxes.

FINDINGS OF FACT

1. On September 24, 1984, the Audit Division issued a Statement of Deficiency ("Statement") to petitioner, Balakrishnan Romanathan, asserting that he was a person required to collect, truthfully account for and pay over the New York State and City withholding taxes of Quadratach Research Corp. ("Quadratach") for the period July 1, 1979 through December 31, 1979. The aforementioned Statement further alleged that petitioner willfully failed to collect, truthfully account for and pay over said withholding taxes and that he was therefore subject to a penalty equal in amount to the unpaid withholding taxes of \$2,327.10. Accordingly, on September 24, 1984, the Audit Division issued a Notice of Deficiency to petitioner for the year 1979 asserting a deficiency of \$2,327.10.

2. During the period at issue, petitioner was Secretary-Treasurer of Quadratach, however, he owned none of its stock nor did he make any loans to or investments in said corporation. One Frederick E. Barrett was the sole shareholder and President of Quadratach. Petitioner became an officer of Quadratach solely as an accommodation to Mr. Barrett.

3. Petitioner was employed on a full-time basis by Quadratach as an electrical engineer. Petitioner's duties involved bidding on government contracts and overseeing those contracts which were awarded to Quadratach from start to finish. Mr. Romanathan was authorized to sign checks on behalf of Quadratach, however, he did so only in Mr. Barrett's absence. Petitioner had no authority to determine which creditors of Quadratach were to be paid nor was he involved in the hiring or firing of employees.

4. Quadratach secured many of its government contracts through the Small Business Administration ("SBA") and had received a start up loan from the SBA

of approximately \$175,000.00. As the result of a contractual agreement with the SBA, all checks drafted by Quadratech had to be signed either by petitioner or Mr. Barrett and also required a second signature by a representative from the SBA. Sometime in 1979, Mr. Barrett and the SBA encountered serious disputes and, as the result of said disputes, the SBA would no longer co-sign any checks drafted by Quadratech. At this point in time, Mr. Barrett ordered petitioner not to sign any checks without his approval and specifically ordered petitioner not to pay the past due withholding taxes in dispute herein.

5. The Internal Revenue Service questioned petitioner with respect to his responsibility for payment of Quadratech's past due Federal withholding and social security taxes. As the result of its investigation, the Internal Revenue Service determined that petitioner was not a person responsible for the collection and payment of Quadratech's Federal taxes.

CONCLUSIONS OF LAW

A. That petitioner was not a "person", as described in Tax Law §685(n) and Administrative Code §T46-185.0(n), required to collect, truthfully account for and pay over the New York State and City withholding taxes of Quadratech. Petitioner did not determine which creditors were to be paid, did not hire or fire employees and was not a shareholder or investor in the corporation. Mr. Romanathan was named an officer of Quadratech solely as an accommodation to Mr. Barrett and he signed corporate checks only in Mr. Barrett's absence. Accordingly, petitioner is not liable for the penalty imposed pursuant to Tax Law §685(g) and Administrative Code §T46-185.0(g).

B. That the petition of Balakrishnan Romanathan is granted and the Notice of Deficiency dated September 24, 1984 is hereby cancelled.


DATED: Albany, New York

STATE TAX COMMISSION

APR 28 1986


PRESIDENT


COMMISSIONER


COMMISSIONER