

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Dominic Stigi :
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 Year 1978. :

State of New York :

ss.:

County of Albany :

Doris E. Steinhardt, 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 18th day of February, 1986, he/she served the within notice of Decision by certified mail upon Dominic Stigi, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Dominic Stigi
292 Whitman Drive
Brooklyn, NY 11234

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
18th day of February, 1986.

Doris E. Steinhardt

Jean Conz
Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Dominic Stigi :

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 Year 1978. :

State of New York :

ss.:

County of Albany :

Doris E. Steinhardt, 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 18th day of February, 1986, he served the within notice of Decision by certified mail upon Milton Weinstein, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Milton Weinstein
111 Great Neck Rd.
Great Neck, NY 11021

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
18th day of February, 1986.

Doris E. Steinhardt

John Coughlin
Authorized to administer oaths
pursuant to Tax Law section 174

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

February 18, 1986

Dominic Stigi
292 Whitman Drive
Brooklyn, NY 11234

Dear Mr. Stigi:

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
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
Milton Weinstein
111 Great Neck Rd.
Great Neck, NY 11021
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
DOMINIC STIGI	:	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 January 1, 1978	:	
through December 31, 1978.	:	

Petitioner, Dominic Stigi, 292 Whitman Drive, Brooklyn, New York 11234, 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 January 1, 1978 through December 31, 1978 (File No. 48116).

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 August 20, 1985 at 2:45 P.M., with all briefs to be submitted by October 20, 1985. Petitioner appeared by Milton Weinstein, C.P.A. 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 Romulus Furniture 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 July 25, 1983, the Audit Division issued a Statement of Deficiency ("Statement") to petitioner, Dominic Stigi, asserting that he was a person required to collect, truthfully account for and pay over the New York State and City withholding taxes of Romulus Furniture Corp. ("Romulus") for the year 1978. 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 \$4,232.06. Accordingly, on July 23, 1983, the Audit Division issued a Notice of Deficiency to petitioner for the year 1978 asserting a deficiency of \$4,232.06.

2. During the year at issue, petitioner was Secretary-Treasurer of Romulus; however, he owned none of its stock nor did he make any loans to or investments in said corporation. One Frank Leone, Sr. was the sole shareholder and President of Romulus. When Romulus was incorporated in 1964, petitioner became an officer of the corporation solely as an accommodation to Mr. Leone.

3. Petitioner was employed on a full-time basis by Romulus as its sales manager. Mr. Stigi was authorized to sign checks on behalf of Romulus; however, he did so only in Mr. Leone's absence and only for that merchandise which had to be paid for upon delivery. Furthermore, Mr. Leone would, prior to any known absences, advise Romulus' bookkeeper of those deliveries which were expected to be made during his absence and he also instructed said bookkeeper to draft a check and present it to petitioner for signature upon delivery of the merchandise. Petitioner did not determine which creditors of the corporation were to be paid and he was not involved in any of Romulus' administrative or financial functions.

4. Mr. Stigi was not involved in the hiring or firing of employees nor did he ever sign any tax returns on behalf of the corporation. Petitioner was not responsible for the collection and/or payment of Romulus' withholding taxes and he first became aware that Romulus had not remitted its proper withholding taxes upon his receipt of the aforementioned Statement of Deficiency and Notice of Deficiency.

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 Romulus. Petitioner did not determine which creditors were to be paid, did not sign tax returns, was not responsible for the collection and/or payment of withholding taxes, did not hire or fire employees and was not a shareholder in the corporation. Mr. Stigi was named an officer of Romulus solely as an accommodation to Mr. Leone and he signed corporate checks only in Mr. Leone's absence. Accordingly, petitioner is not liable for the penalty imposed pursuant to Tax Law §685(g) and Administrative Code §T46-185.0(g).

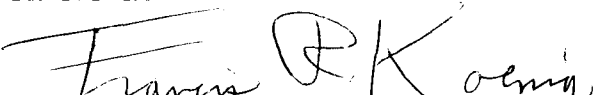
B. That the petition of Dominic Stigi is granted and the Notice of Deficiency dated July 25, 1983 is hereby cancelled.


DATED: Albany, New York

STATE TAX COMMISSION

FEB 18 1986


PRESIDENT


COMMISSIONER


COMMISSIONER