

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

EUGENE CORNACCHIA

For a Redetermination of a Deficiency or  
a Refund of Personal Income  
Taxes under Article(s) 22 of the  
Tax Law for the (Year(s) 1965

AFFIDAVIT OF MAILING  
OF NOTICE OF DECISION  
BY (CERTIFIED) MAIL

State of New York  
County of Albany

Martha Funaro , being duly sworn, deposes and says that  
she is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 24th day of July , 1973 , she served the within  
Notice of Decision (or Determination) by (certified) mail upon Eugene Cornacchia

(representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Eugene Cornacchia  
71 Parkway Circle  
Scarsdale, New York

and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative  
of) 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

24th day of July , 1973

Lynn Wilson

Martha Funaro



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A

STATE CAMPUS  
ALBANY, N. Y. 12226

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION

NORMAN F. GALLMAN, ~~President~~ PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

STATE TAX COMMISSION  
HEARING UNIT

EDWARD ROOK  
SECRETARY TO  
COMMISSION

ADDRESS YOUR REPLY TO

Dated: Albany, New York

July 24, 1973

Eugene Cornacchia  
71 Parkway Circle  
Scarsdale, New York

Dear Mr. Cornacchia:

Please take notice of the **DECISION**  
of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to  
Section(s) **690** of the Tax Law, any  
proceeding in court to review an adverse deci-  
sion must be commenced within **4 Months**  
from the date of this notice.

Any inquiries concerning the computation of tax  
due or refund allowed in accordance with this  
decision or concerning any other matter relative  
hereto may be addressed to the undersigned.  
These will be referred to the proper party for  
reply.

Very truly yours,

**Paul B. Coburn**

Enc.

HEARING OFFICER

cc: Petitioner's Representative  
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
EUGENE CORNACCHIA	:	DECISION
for Redetermination of Deficiency or	:	
for Refund of Personal Income Tax	:	
under Article 22 of the Tax Law for	:	
the Year 1965.	:	

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Petitioner, Eugene Cornacchia, has filed a petition for redetermination of deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1965. (File No. 13-1995058). A formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York, on April 26, 1973, at 2:45 P.M. Petitioner appeared pro se. The Income Tax Bureau appeared by Saul Heckleman, Esq., (Francis X. Boylan, Esq., of Counsel).

ISSUE

Was petitioner, Eugene Cornacchia, liable for unpaid New York State withholding taxes due from Perfection Press, Inc. for the year 1965?

FINDINGS OF FACT

1. Perfection Press, Inc. failed to pay over to the Income Tax Bureau New York State personal income taxes withheld from its employees for the year 1965 in the sum of \$5,395.54. The corporation is presently defunct.

2. On December 16, 1968, the Income Tax Bureau issued a Statement of Deficiency against petitioner, Eugene Cornacchia, imposing a penalty equal to the amount of New York State withholding taxes due from Perfection Press, Inc. for the year 1965 upon the grounds that he was a person required to collect, truthfully account for and pay over said taxes and that he willfully failed to do so. It accordingly issued a Notice of Deficiency against him in the sum of \$5,395.54.

3. On October 3, 1963, petitioner, Eugene Cornacchia, invested \$18,500.00 in Perfection Press, Inc. for which he was to receive 20% of the shares of stock of the corporation. The shares of stock were never physically issued. He simultaneously entered into a stockholders' agreement with Gasper Salvo and the corporation. The stockholders' agreement provided that he was to be a director and secretary-treasurer of the corporation. It further provided that his signature was required on all corporate checks. He was also to receive a salary of \$250.00 per week.

4. On March 4, 1965, petitioner, Eugene Cornacchia, entered into an agreement with Gasper Salvo and Perfection Press, Inc. wherein the stockholders' agreement of October 3, 1963, was cancelled. It further provided that the corporation was to pay him the sum of \$18,500.00 in 37 monthly installments.

5. Petitioner, Eugene Cornacchia, resigned as director, secretary and treasurer of Perfection Press, Inc. on August 6, 1965. However, he continued to work for the corporation until

November, 1965 when it went out of business.

6. Petitioner, Eugene Cornacchia, on February 28, 1966, signed the reconciliation statement of New York State withholding taxes due from Perfection Press, Inc. for the year 1965. There was no breakdown of the \$5,395.54 in the tax due listed on the form as to the particular periods during the year for which the tax was due. He has failed to submit any documentary or other substantial evidence to prove when during the year the withholding tax liabilities of the corporation accrued.

CONCLUSIONS OF LAW

A. That petitioner, Eugene Cornacchia, was a person required to collect, truthfully account for and pay over New York State withholding taxes due from Perfection Press, Inc. for the year 1965 in accordance with the meaning and intent of sections 674 and 685(1) of the Tax Law.

B. That since petitioner, Eugene Cornacchia, willfully failed to collect, truthfully account for and pay over New York State withholding taxes due from Perfection Press, Inc. for the year 1965, therefore a penalty equal to the amount of the unpaid withholding taxes was properly assessed against him in accordance with the meaning and intent of section 685(g) of the Tax Law.

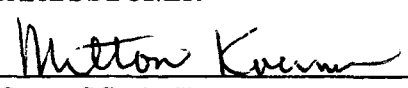
C. That the petition of Eugene Cornacchia is denied and the Notice of Deficiency issued December 16, 1968, is sustained.

DATED: Albany, New York  
July 24, 1973

STATE TAX COMMISSION

  
COMMISSIONER

  
COMMISSIONER

  
COMMISSIONER