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STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

PENDLETON CONTRACTORS, LTD.

c/o WILLIAM A. RUPERT

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) 1967 and 1968.:

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 19th day of August, 1974, she served the within
Notice of Decision (or Determination) by (certified) mail upon PENDLETON CONTRACTORS,
LTD.
c/o WILLIAM A. RUPERT (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
Pendleton Contractors, Ltd.
wrapper addressed as follows: c/o William A. Rupert
6952 Bear Ridge Road
Lockport, New York 14120

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

19th day of August, 1974.

Janet Mack

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

PENDLETON CONTRACTORS, LTD.

c/o WILLIAM A. RUPERT

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) 1967 and 1968.:

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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 19th day of August, 1974, she served the within
Notice of Decision (or Determination) by (certified) mail upon ROBERT SCHAUS, ESQ.

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Robert Schaus, Esq.
Schaus and Schaus
705 Crosby Building
Buffalo, New York 14202

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

19th day of August, 1974.

Janet Mack

Martha Funaro



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

STATE TAX COMMISSION

MARIO A. PROCACCINO, PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

BUILDING 9, ROOM 214-A
STATE CAMPUS
ALBANY, N.Y. 12227

AREA CODE 518

ADDRESS YOUR REPLY TO

MR. WRIGHT 457-2655
MR. LEISNER 457-2657
MR. COBURN 457-2896

DATED: Albany, New York
August 19, 1974

Pendleton Contractors, Ltd.
c/o William A. Rupert
6952 Bear Ridge Road
Lockport, New York 14120

Dear Mr. Rupert:

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,

L. Robert Leisner

HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

AD-1.12 (8/73)

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
PENDLETON CONTRACTORS, Ltd.	:	
c/o WILLIAM A. RUPERT	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Taxes	:	
under Article 22 of the Tax Law for	:	
the Years 1967 and 1968.	:	

Petitioner, Pendleton Contractors, Ltd., c/o William A. Rupert, has filed a petition for a redetermination of a deficiency or for refund of personal income taxes under Article 22 of the Tax Law for the years 1967 and 1968. (File No. 16-0851665). A formal hearing was held before L. Robert Leisner, Hearing Officer, at the offices of the State Tax Commission, State Office Building, Buffalo, New York, on November 15, 1973, at 9:30 A.M. Petitioner was represented by Schaus & Schaus (Robert Schaus, Esq., of counsel). The Income Tax Bureau was represented by Saul Heckelman, Esq., (James A. Scott, Esq., of counsel).

ISSUE

Is petitioner, William A. Rupert, liable for unpaid New York State withholding taxes due from Pendleton Contractors, Ltd., for the years 1967 and 1968?

FINDINGS OF FACT

1. Pendleton Contractors, Ltd. failed to pay over to the Income Tax Bureau, New York State personal income taxes withheld from its employees for the years 1967 and 1968, in the sum of \$7,364.50. The corporation is presently defunct.

2. On February 28, 1972, the Income Tax Bureau issued a Statement of Deficiency against petitioner, William A. Rupert, imposing a

penalty equal to the amount of New York State withholding taxes due from Pendleton Contractors, Ltd., for the years 1967 and 1968, 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 \$7,364.50.

3. Petitioner, William A. Rupert, was president of Pendleton Contractors, Ltd. during the years 1967 and 1968. He owned 60% of the stock in the corporation. His duties consisted of supervising the operation of machinery in the field and also other areas of corporate activities. He signed corporate checks. When the corporation went out of business, he signed a personal note for corporate debts. There were two other corporate officers who were vice-president and secretary-treasurer.

4. Petitioner, William A. Rupert, contended that Pendleton Contractors, Ltd., was dissolved as of December 31, 1967, and that its unfinished contracts were assigned to the Union Concrete Company. He further contended that Union Concrete Company was liable for any unpaid taxes as the successors to Pendleton Contractors, Ltd., which did no work in 1968.

5. Pendleton Contractors, Ltd. maintained a bank account and equipment during the first three months of the year 1968. Petitioner, William A. Rupert, and the other two officers received salaries as corporate officers during said period.

6. Pendleton Contractors, Ltd. ceased doing business after March 31, 1968.

CONCLUSIONS OF LAW

A. That petitioner, William A. Rupert, as an officer and president of Pendleton Contractors, Ltd. was a person required to collect, truthfully account for and pay over New York State

withholding taxes due from said corporation for the year 1967 and the first three months of 1968, in accordance with the meaning and intent of sections 674 and 685(1) of the Tax Law.

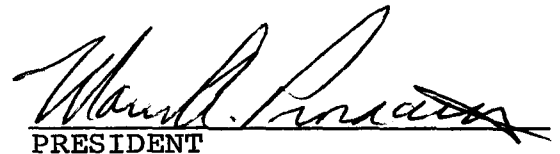
B. That since petitioner, William A. Rupert, willfully failed to collect, truthfully account for and pay over New York State withholding taxes due from Pendleton Contractors, Ltd. for the period of January 1, 1967 to March 31, 1968 inclusive, therefore a penalty equal to the total amount of unpaid withholding taxes for said period was properly assessed against him in accordance with the meaning and intent of section 685(g) of the Tax Law. The deficiency will be recomputed in accordance with this decision.

C. Petitioner, William A. Rupert, is not liable for any taxes after March 31, 1968.

D. Except as hereinabove modified, the petition of Pendleton Contractors, Ltd., c/o William A. Rupert, is denied and the Notice of Deficiency issued February 28, 1972, is sustained.

DATED: Albany, New York
August 19, 1974

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER