

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

JOSEPH A. & MARYLYN C. CRICCHIO

For a Redetermination of a Deficiency or  
a Refund of Personal Income :  
Taxes under Article (x) 22 of the :  
Tax Law for the Year (x) 1970. :

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

State of New York  
County of Albany

MARY GROFF , 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 14th day of January , 1976 , she served the within  
Notice of Decision ~~(for Redetermination)~~ by ~~(certified)~~ mail upon JOSEPH A. &  
MARYLYN C. CRICCHIO ~~(representative of)~~ the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Mr. and Mrs. Joseph A. Cricchio  
Pleasantdale Road  
Rutland, Massachusetts 01543  
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)~~  
~~(the)~~ petitioner herein and that the address set forth on said wrapper is the last  
known address of the ~~(representative of the)~~ petitioner.

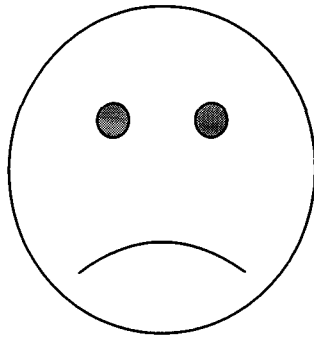
Sworn to before me this

14th day of January , 1976.

*Janet Macer*

*Mary Groff*

# CORRECTION FOLLOWS



*NOTE*: THE FOLLOWING  
DOCUMENT(S) ARE BEING REFILMED  
TO ENSURE CLARITY

PHOTO MICROGRAPHICS INC.

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :

of :

IRWIN A. CRAINE : DECISION

for a Redetermination of a Deficiency or:  
for Refund of Personal Income Taxes  
under Article 22 of the Tax Law for the :  
Years 1964 and 1965.

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Irwin A. Craine, 98 DeHaven Drive, Yonkers, New York, filed a petition under section 689 of the Tax Law for the redetermination of a deficiency dated January 26, 1970, in the amount of \$740.00 as a penalty under section 685(g) for withholding taxes due from Suburban Motor Freight, Inc. under Article 22 of the Tax Law for the years 1964 and 1965.

A hearing was duly held on October 17, 1972, at the offices of the State Tax Commission, 80 Centre Street, New York, New York, before Nigel G. Wright, Hearing Officer. The petitioner was not represented. The Income Tax Bureau was represented by Saul Heckelman, Esq., appearing by Francis X. Boylan, Esq., of counsel. The record of said hearing has been duly examined and considered.

#### ISSUE

The issue in this case is whether the petitioner is a responsible officer who is liable for withholding taxes of a corporation during the time that it was operated under Chapter XI of the Bankruptcy Act.

FINDINGS OF FACT

1. Suburban Motor Freight, Inc. began business in the 1950's. Its address was 510 West 38 Street, New York City. It did a trucking business but as a result of employee dishonesty it began to fail. It filed a voluntary petition under Chapter XI of the Bankruptcy Act on July 22, 1964, and was appointed debtor-in-possession. It was adjudicated a bankrupt on January 5, 1965. It owes unpaid withholding taxes for the period July 22, 1964, through January 5, 1965.

2. The reason for the Chapter XI proceeding was to try to find a buyer for the franchise. However, the actual business of the company was either lost to competitors or was cut back and the business was finally closed down.

3. The amounts of unpaid withholding taxes have been estimated for July 22 to December 31, 1964, to be \$710.00 and for January 1 to January 6, 1965, to be \$30.00. The petitioner, from records in the possession of the attorney for the trustee, estimates the correct amounts of withholding taxes to be \$317.40 and \$11.90. This reduction is due to a severe cut in the payroll.

4. The State made claims for corporation taxes in bankruptcy which were paid. Unsecured creditors received a small distribution. However, the State's claims for withholding taxes had not been filed in time and were not paid.

5. Petitioner was president of Suburban Motor Freight, Inc. He had paid the withholding taxes prior to the Chapter XI proceeding. During the Chapter XI proceeding he handled the operations of the company and he was the only operating officer.

CONCLUSIONS OF LAW

The petitioner is liable for withholding taxes as he was a responsible officer and he wilfully failed to pay the withholding taxes. It is of no importance that this liability arose after the corporation had filed a petition under Chapter XI of the Bankruptcy Act as the corporation had continued on as debtor-in-possession. (In re Serignese 214 F.S. 917 aff'd sub nom. Goring 330 F 2d 960).

The petitioner's estimate of the amount of withheld taxes is accepted as correct.

The deficiency is erroneous in part and is redetermined to be \$329.30.

DATED: Albany, New York  
May 20, 1975

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER