

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

DOMINICK GUIDICE

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

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)~~ 1966

State of New York  
County of Albany

Janet Mack, 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 10th day of February , 1975, she served the within  
Notice of Decision ~~(s) Decision~~ by (certified) mail upon Dominick Guidice

~~(XXXXXXXXXXXX)~~ the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Mr. Dominick Guidice  
13 Marshall Drive  
Selden, 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 ~~(XXXXXXXXXXXX)~~  
~~(s)~~ petitioner herein and that the address set forth on said wrapper is the last  
known address of the ~~(XXXXXXXXXXXX)~~ petitioner.

Sworn to before me this

10th day of February , 1975.

Katherine B. Manly

Janet Mack

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

DOMINICK GUIDICE

For a Redetermination of a Deficiency or  
a Refund of Personal Income  
Taxes under Article ~~(ss)~~ 22 of the  
Tax Law for the Year ~~(xx)~~ 1966.

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

State of New York  
County of Albany

JANET MACK

, 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 29th day of January, 1975, she served the within

Notice of Decision ~~(for Redetermination)~~ by (certified) mail upon DOMINICK GUIDICE

~~(representative of)~~ the petitioner in the within

proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows:

Mr. Dominick Guidice  
20 Yarmouth Lane  
Nesconset, New York 11767

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)~~  
~~(ss)~~ 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

29th day of January, 1975.

Katherine B. Mawley

Janet Mack

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

DOMINICK GUIDICE

For a Redetermination of a Deficiency or  
a Refund of Personal Income  
Taxes under Article ~~(a)~~ 22 of the  
Tax Law for the Year ~~(a)~~ 1966.

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

State of New York  
County of Albany

JANET MACK

, 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 29th day of January, 1975, she served the within

Notice of Decision ~~(for Determination)~~ by (certified) mail upon MORTIMER J. NATKINS, ESQ.

(representative of) the petitioner in the within

proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Mortimer J. Natkins, Esq.

Empire State Building, Suite 3020  
350 Fifth Avenue  
New York, New York 10001

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

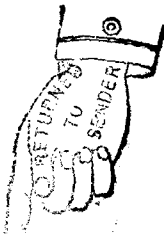
29th day of January, 1975

Katherine D. Mauley

Janet Mack

**STATE OF NEW YORK**  
**Department of Taxation and Finance**

STATE CAMPUS  
ALBANY, N. Y. 12227



FORWARDING EXPIRES

Mr. ~~Dominick~~ Guidice

20 Yarmouth Lane

Nesconset, New York 11767



*[Handwritten signature]*

**CERTIFIED**

**No. 202116**

MAIL



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  
**January 29, 1975**

**Mr. Dominick Guidice**  
**20 Yarmouth Lane**  
**Nesconset, New York 11767**

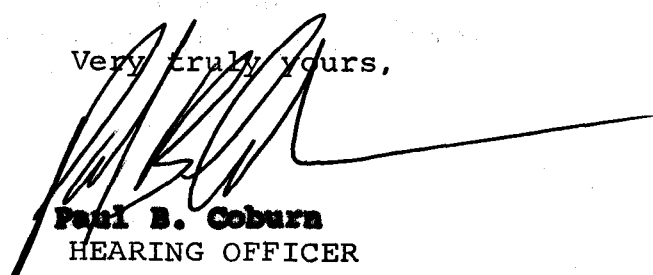
**Dear Mr. Guidice:**

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

Please take further notice that pursuant to  
Section (b) **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**  
HEARING OFFICER

Enc.

cc: Petitioner's Representative  
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
DOMINICK GUIDICE	:	DECISION
for Redetermination of Deficiency or	:	
for Refund of Personal Income Tax	:	
under Article 22 of the Tax Law for	:	
the Year 1966.	:	

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Petitioner, Dominick Guidice, 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 1966. (File No. 11-1338393). 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 March 23, 1973, at 9:00 A.M. Petitioner appeared by Mortimer J. Natkins, Esq. The Income Tax Bureau appeared by Saul Heckelman, Esq. (James A. Scott, Esq., of Counsel).

#### ISSUE

Is petitioner, Dominick Guidice, liable for unpaid New York State withholding taxes due from The Slag Company of America, Inc. for the year 1966?

#### FINDINGS OF FACT

1. The Slag Company of America, Inc. failed to pay over to the Income Tax Bureau, New York State personal income taxes withheld from its employees for the year 1966 in the sum of \$995.90. The corporation is presently defunct.

2. On September 29, 1969, the Income Tax Bureau issued a Statement of Deficiency against petitioner, Dominick Guidice, equal to the amount of New York State withholding taxes due from The Slag Company of America, Inc. for the year 1966 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 \$995.90.

3. Petitioner, Dominick Guidice, was employed by The Slag Company of America, Inc. in June, 1940. He was hired as office manager and bookkeeper. In 1956, he was given the title of vice president of the corporation. His employment was terminated in November, 1966, when the company went out of business. He did not own any stock in the corporation. He was not a director of the corporation. He received a fixed union scale salary each week from the corporation. He did not sign any corporate tax returns.

4. Martin McGowan was the president and fifty percent stockholder of The Slag Company of America, Inc. during the year 1966. Although petitioner, Dominick Guidice, was vice president of the corporation and cosigned checks and notes with Mr. McGowan, he was a subordinate officer whose activities were subject to the dictates of Mr. McGowan, and while Mr. McGowan obtained information and cooperation from petitioner, Dominick Guidice from time to time, petitioner, Dominick Guidice, had no authority to make decisions as

to which creditors or which taxes should or should not be paid. It was Mr. McGowan who made the final decisions as to which creditors and which taxes should or should not be paid.

CONCLUSIONS OF LAW

A. That petitioner, Dominick Guidice, as vice president, office manager, and bookkeeper of The Slag Company of America, Inc., was not a person required to collect, truthfully account for, and pay over New York State personal income withholding taxes due from said corporation for the year 1966, in accordance with the meaning and intent of sections 674 and 685(1) of the Tax Law, since he acted only in a subordinate capacity, had no voice in the policy or decision making process and had no authority to determine which creditors or taxes should be paid. Sherwood v. United States of America, 65-2 USTC ¶9530, Petition of Arthur Siegel, Decision S.T.C., August 1, 1972.

B. That since petitioner, Dominick Guidice, was not a person required to collect, truthfully account for, and pay over New York State personal income withholding taxes due from The Slag Company of America, Inc. for the year 1966, therefore, a penalty equal to the total amount of unpaid withholding taxes was improperly assessed against him in accordance with the meaning and intent of section 685(g) of the Tax Law.

C. That the petition of Dominick Guidice is granted and the Notice of Deficiency issued September 29, 1969, is cancelled.

DATED: Albany, New York  
January 29, 1975

STATE TAX COMMISSION

  
COMMISSIONER

  
COMMISSIONER

  
COMMISSIONER