

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

MICHAEL CORRADO

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Personal Income :  
Taxes under Article ~~(x)~~ 22 of the :  
Tax Law for the Year(s) ~~or Period(s)~~ :  
1971 and 1972.

State of New York  
County of Albany

Marsina Donnini, 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 August, 1977, she served the within  
Notice of Decision by (certified) mail upon Michael Corrado

(~~representative of~~) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Mr. Michael Corrado  
32 Seagull Lane  
Port Washington, New York 11050

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 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

24th day of August, 1977.

Marsina Donnini

Janet Mack

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

MICHAEL CORRADO

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Personal Income :  
Taxes under Article(x) 22 of the :  
Tax Law for the Year(s) ~~xxxPeriod(x)~~ :  
1971 and 1972.

State of New York  
County of Albany

Marsina Donnini, 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 August, 1977, she served the within  
Notice of Decision by (certified) mail upon David Darlow  
(representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: David Darlow, Esq.  
Cutler & Cutler  
150 East 58th Street  
New York, New York 10022  
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 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

24th day of August, 1977.

Marsina Donnini

Just Mack



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

JAMES H. TULLY JR., PRESIDENT  
MILTON KOERNER  
THOMAS H. LYNCH

**August 24, 1977**

**Mr. Michael Corrado**  
**32 Seagull Lane**  
**Port Washington, New York 11050**

**Dear Mr. Corrado:**

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 **(5) 690** of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws 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 the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,

**Joseph Chyrywaty**  
**Hearing Examiner**

cc: Petitioner's Representative  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
MICHAEL CORRADO	:	DECISION
for Redetermination of Deficiency or for	:	
Refund of Personal Income Taxes under	:	
Article 22 of the Tax Law for the Years	:	
1971 and 1972.	:	
	:	

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Petitioner, Michael Corrado, residing at 32 Seagull Lane, Port Washington, New York 11050, filed a petition for redetermination of deficiency or for refund of personal income taxes under Article 22 of the Tax Law for the years 1971 and 1972. (File No. 12566).

A small claims hearing was held before Harry Huebsch, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on April 28, 1977 at 10:45 A.M. Petitioner appeared by David Darlow, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Abraham Schwartz, Esq. of counsel).

#### ISSUES

I. Was petitioner, Michael Corrado, a responsible person liable for the penalty imposed against him in accordance with section 685(g) of the Tax Law with respect to unpaid New York State withholding taxes due from Tru-Color Labs, Inc. for the years 1971 and 1972?

II. Was the burden of proof as to willfullness, in accordance with section 685(g) of the Tax Law, upon the petitioner or upon the State Tax Commission?

FINDINGS OF FACT

1. Tru-Color Labs, Inc. failed to pay over to the Income Tax Bureau \$5,107.60 of New York State personal income taxes withheld from its employees for the years 1971 and 1972.

2. Petitioner, Michael Corrado, was executive vice-president of Tru-Color Labs, Inc. He was authorized to sign checks and did sign checks for payments to other creditors. He signed New York State Form IT-2103 reconciliation of personal income tax withheld from employees of Tru-Color Labs, Inc.

3. Petitioner did not submit documentary or any other substantial evidence to support his contention that he did not willfully fail to collect, truthfully account for and pay over the New York State personal income taxes withheld from employees of Tru-Color Labs, Inc.

CONCLUSIONS OF LAW

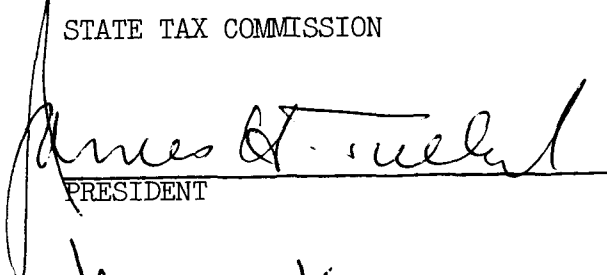
A. That petitioner, Michael Corrado, was a person required to collect, truthfully account for and pay over New York State withholding taxes due from Tru-Color Labs, Inc. for the years 1971 and 1972 in accordance with the meaning and intent of section 685(n) of the Tax Law; and that since petitioner willfully failed or caused Tru-Color Labs, Inc. to willfully fail to collect, truthfully account for and pay over New York State withholding taxes due from said corporation for the years 1971 and 1972, a penalty equal to the total amount of unpaid withholding taxes was properly asserted against him in accordance with the meaning and intent of section 685(g) of the Tax Law.

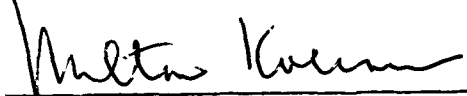
B. That the burden of proof required to establish that he did not willfully fail to collect, truthfully account for and pay over withholding taxes due from Tru-Color Labs, Inc. was upon the petitioner, Michael Corrado, in accordance with the meaning and intent of section 689(e) of the Tax Law.


C. That the petition of Michael Corrado is denied and the Notice of Deficiency in the amount of \$5,107.60 issued July 28, 1975 is sustained.

DATED: Albany, New York  
August 24, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER