

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ALFONSE T. DENATALE

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article(s) 22 of the :
Tax Law for the Year(s) ~~or Period(s)~~ :
1972 and 1973

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 22 day of August, 1977, she served the within
Notice of Decision by (certified) mail upon Alfonse T. Denatale

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

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Alfonse T. Denatale
104 Sumner Avenue
Yonkers, New York 10704

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)~~
~~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

22 day of August, 1977.

Marsina Donnini

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
ALFONSE T. DENATALE

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of **Personal Income** :
Taxes under Article ~~(9)~~ 22 of the :
Tax Law for the Year(s) ~~or Period(s)~~ :
1972 & 1973

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 22 day of August, 1977, she served the within Notice of Decision by (certified) mail upon Earl Henderson, CPA (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Earl Henderson, CPA
Sperduto, Priskie, Spector & Vanacore
10 Columbus Circle
New York, New York 10019
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

22 day of August, 1977.

Marsina Donnini

Janet 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 22, 1977

Alfonse T. Denatale
104 Sumner Avenue
Yonkers, New York 10704

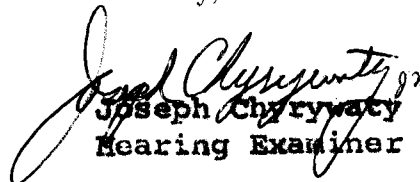
Dear Mr. Denatale:

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(s) **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

In the Matter of the Petition	:	
of	:	
ALFONSE T. DENATALE	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Taxes	:	
under Article 22 of the Tax Law for	:	
the Years 1972 and 1973.	:	

Petitioner, Alfonse T. Denatale, residing at 104 Sumner Avenue, Yonkers, New York 10704, has filed a petition for redetermination of a deficiency or for refund of personal income taxes under Article 22 of the Tax Law for the years 1972 and 1973 (File No. 12574).

A small claims hearing was held before Philip Mercurio, Small Claims Hearing Officer, on September 17, 1976 at 10:45 A.M. at the offices of the State Tax Commission, Two World Trade Center, New York, New York. The petitioner appeared by Earl Henderson, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq., (William Fox, Esq. of counsel).

ISSUE

Whether the petitioner, Alfonse T. Denatale, is liable for a penalty imposed for failure to collect, truthfully account for and pay over New York State withholding taxes in the amount of \$2,832.46 due from Stephanie Pleating and Stitching Corporation for the years 1972 and 1973.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. On June 30, 1975, the Income Tax Bureau issued separate notices of deficiency for \$2,832.46 each against petitioner, Alfonse T. Denatale, and against Mr. Adam J. Basso, imposing separate penalties under section 685(g) of the Tax Law upon the grounds that each of these individuals was a responsible officer of Stephanie Pleating and Stitching Corporation for the years 1972 and 1973.

2. Petitioner, Alfonse T. Denatale, conceded that he was a responsible officer of the said corporation for the years 1972 and 1973.

3. Petitioner, Alfonse T. Denatale, and Mr. Adam J. Basso, submitted a check dated July 24, 1975, in the amount of \$2,832.46, which represented payment equal to the withholding taxes due from said corporation. This payment was submitted with the assumption that no further liability would be asserted against petitioner, Alfonse T. Denatale, or Mr. Adam J. Basso with respect to this matter. However, the Income Tax Bureau applied the payment equally between the deficiencies asserted against the petitioner and Mr. Adam J. Basso. On August 21, 1975, the Income Tax Bureau sent a letter to the representative of petitioner and Adam J. Basso which stated "Remittance submitted in the amount of \$2,832.46 has been applied to the outstanding liability. Balance remains due for penalty and interest in the total amount of \$1,628.35."

4. That the petitioner is a person liable for the penalty of \$2,832.46 imposed under section 685(g) of the Tax Law for failure to collect, truthfully account for and pay over New York State withholding taxes due from said corporation.

5. That the penalty asserted pursuant to section 685(g) of the Tax Law has not been fully satisfied by the petitioner, Alfonse T. Denatale. The remittance of \$2,832.46 was submitted on behalf of both the petitioner, Alfonse T. Denatale, and Mr. Adam J. Basso, which the Income Tax Bureau applied equally.

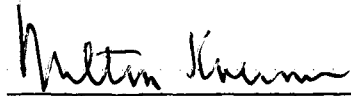
6. That the penalty asserted pursuant to section 685(g) of the Tax Law is due in full from each responsible person against whom said penalty is imposed and that the remaining section 685(g) penalty due from petitioner, Alfonse T. Denatale, is \$1,416.23.

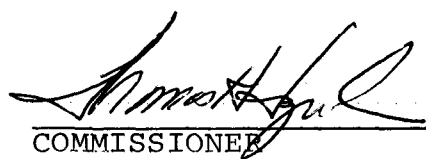
7. That the petition of Alfonse T. Denatale is denied and the Notice of Deficiency issued June 30, 1975 is sustained.

DATED: Albany, New York
August 22, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER