

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
FRANK ESPOSITO

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)~~ :
1969 through 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 30th day of June, 1977, she served the within
Notice of Decision by (certified) mail upon Frank Esposito
~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Frank Esposito
46 S. Terrace Avenue
Mt. Vernon, 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 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
~~XXXXXX~~ last known address of the ~~(representative of the)~~ petitioner.

Sworn to before me this

30th day of June, 1977.

Marsina Donnini

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

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FRANK ESPOSITO

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of Personal Income :
Taxes under Article(s) 22 of the :
Tax Law for the Year(s) ~~XXXXXX~~ :
1969 through 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 30th day of June, 1977, she served the within
Notice of Decision by (certified) mail upon Morris D. Weintraub, Esq.

(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Morris D. Weintraub, Esq.
217 Broadway
New York, New York 10007

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

30th day of June, 1977.

Marsina Donnini

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

TAX APPEALS BUREAU

STATE CAMPUS
ALBANY, N.Y. 12227

June 30, 1977

STATE TAX COMMISSION

ADDRESS YOUR REPLY TO

TELEPHONE: (518) 457-1723

Frank Esposito
46 S. Terrace Avenue
Mt. Vernon, New York

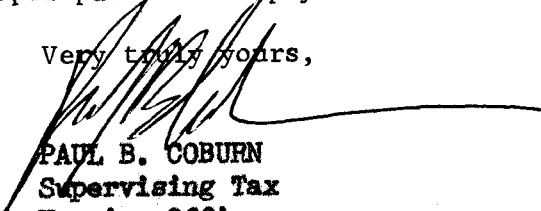
Dear Mr. Esposito:

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

Please take further notice that pursuant to
Section(X) **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.

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. They
will be referred to the proper party for reply.

Very truly yours,


PAUL B. COBURN
Supervising Tax
Hearing Officer

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
FRANK ESPOSITO	:	DECISION
for a Redetermination of a Deficiency	:	
or for Refund of Personal Income Tax	:	
under Article 22 of the Tax Law for	:	
Years 1969 through 1973.	:	

Petitioner, Frank Esposito, 46 S. Terrace Avenue, Mt. Vernon, New York, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1969 through 1973. (File No. 11264).

A formal hearing was held before Harvey B. Baum, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 10, 1977, at 2:45 P.M. Petitioner appeared by Morris D. Weintraub, Esq. The Income Tax Bureau appeared by Peter J. Crotty, Esq. (Irwin Levy, Esq., of counsel).

ISSUE

Whether petitioner, Frank Esposito, was a responsible officer of Food Family, Inc. during the years 1969 through 1973 pursuant to section 685(g) of the Tax Law, liable for failure to withhold and remit tax monies from the employees' wages.

FINDINGS OF FACT

1. A Notice of Deficiency was issued against petitioner, Frank Esposito, for failure to withhold from employee wages, tax monies pursuant to the Tax Law, for the years 1969 through 1973 inclusive, purportedly as a responsible officer of Food Family, Inc., a domestic corporation. An assessment against petitioner for those years computed a deficiency of \$24,828.07.

2. Petitioner, Frank Esposito, timely filed a petition for redetermination of deficiency or for refund for those years, alleging that he was not a responsible officer of the subject corporation for those years within the meaning of the Tax Law and thus was not liable for the tax assessed.

3. Petitioner, Frank Esposito, was hired in either 1960 or 1961 as store manager of one of the corporation's food chain stores, located at 2667 8th Avenue, New York City, with the responsibility of general store management and operation. Specifically he was not responsible for the store's financial records or the handling of the employees' payroll. The corporation had separate bookkeeping personnel to handle those functions.

4. Sometime in 1964 petitioner, Frank Esposito, was transferred to another of the corporation's food stores, located at 2247 7th Avenue, also as general manager, where he worked for about three years, when he resigned to work for another company.

5. Sometime in 1971 petitioner, Frank Esposito, bought an interest in another Food Family store on St. Nicholas Avenue. (It is unknown if this store was a part of the subject corporation or another ownership entity) and worked there until he quit in 1973, because of disagreements over the finances with the other principals, Mr. Copeland, Mr. Rosenblum and Mr. Frank.

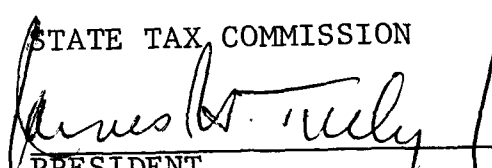
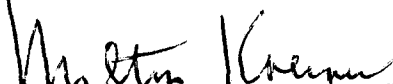
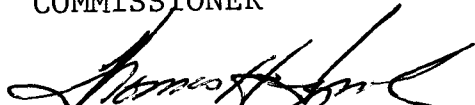
6. Petitioner, Frank Esposito, was never an officer or director of Food Family, Inc. nor did he have access to the books or otherwise handle payroll matters.

CONCLUSIONS OF LAW

A. That petitioner, Frank Esposito, was not a responsible person for the collection of employee withholding taxes for the corporation, Food Family, Inc., within the meaning of section 685(g) of the Tax Law. Petitioner is therefore not liable for the failure to collect those taxes during the subject years.

B. That accordingly, the petition of Frank Esposito is in all respects granted; and the Notice of Deficiency heretofore issued is hereby cancelled.

DATED: Albany, New York
June 30, 1977

STATE TAX COMMISSION

PRESIDENT

COMMISSIONER

COMMISSIONER