

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

FRANK D. HACKETT

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) ~~xxx Period(x)~~ :
1972 and 1973.

State of New York
County of Albany

Bruce Batchelor, being duly sworn, deposes and says that
~~he~~ is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 26th day of April, 1977, ~~he~~ served the within
Notice of Decision by (certified) mail upon Frank D. Hackett

~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows:

Mr. Frank D. Hackett
1400 Glenwood Road
Vestal, New York 13850

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

26th day of April, 1977.

Bruce Batchelor

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N.Y. 12227

ADDRESS YOUR REPLY TO

April 26, 1977

TELEPHONE: (518) **457-1723**

Mr. Frank D. Hackett
1400 Glenwood Road
Vestal, New York 13850

Dear Mr. Hackett:

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

Please take further notice that pursuant to
Section(§) **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,

Frank J. Puccia
Supervisor of Small
Claims Hearings

Enc.

cc: ~~XXXXXXXXXXXXXXXXXXXX~~

Taxing Bureau's Representative:

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
FRANK D. HACKETT	:	DECISION
for Redetermination of Deficiency	:	
or for Refund of Personal Income	:	
Taxes under Article 22 of the Tax	:	
Law for the Years 1972 and 1973.	:	

Petitioner, Frank D. Hackett, 1400 Glenwood Road, Vestal, New York, has filed a petition for redetermination of deficiency or for refund of personal income taxes under Article 22 of the Tax Law for the years 1972 and 1973. (File No. 16-0911035). A small claims hearing was held before Joseph Chyrywaty, Hearing Officer, at the offices of the State Tax Commission, Governmental Civic Center, Binghamton, New York, on October 20, 1976, at 10:45 a.m. Petitioner appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq., (James Scott, Esq. of counsel).

ISSUE

Was the petitioner, Frank D. Hackett, subject to the penalties imposed under section 685(g) of the Tax Law?

FINDINGS OF FACT

1. On October 27, 1975, the Income Tax Bureau issued a notice of Deficiency against Frank D. Hackett in the sum of

\$2,662.39 for the withholding tax periods July 1, 1972 through December 31, 1972; January 1, 1973 through July 5, 1973, and November 1, 1973 through November 30, 1973. This deficiency represents a penalty imposed under section 685(g) of the Tax Law for the nonpayment of withholding taxes by Frisbie Data Systems Inc.

2. On November 15, 1975, Frank D. Hackett filed a petition for redetermination of deficiency of personal income tax for the years 1972 and 1973.

3. Petitioner, Frank D. Hackett, signed an employment agreement with Frisbie Data Systems Inc. on January 17, 1972, which was also the effective date of his employment. This agreement stated in part that the petitioner was to be employed as the vice-president of New Products, and would receive an annual salary between \$12,000.00 and \$15,000.00. He remained an employee of Frisbie Data Systems Inc. until January 26, 1973. The agreement also offered an option, which he exercised, to purchase eight shares of stock in Frisbie Data Systems Inc.

4. Petitioner, Frank D. Hackett, was offered the position as vice-president of New Products with Frisbie Data Systems Inc. because of his technical experience acquired while working for IBM Corp. His duties with Frisbie Data Systems Inc. were to supervise the designing of an imprinter and to make available his technical knowledge and experience to enhance the growth of Frisbie Data Systems Inc.

5. Petitioner, Frank D. Hackett, was not a member of the Board of Directors. He did not have the authority to sign checks for Frisbie Data Systems Inc. He did no bookkeeping of accounting for Frisbie Data Systems Inc., and was not responsible to prepare any tax reports.

CONCLUSIONS OF LAW

A. That the petitioner, Frank D. Hackett, was not a "person under a duty to perform the act in respect of which the violation occurs" as defined in section 685(n) and is therefore not subject to the penalty imposed under section 685(g) of the Tax Law.

B. That the petition of Frank D. Hackett is granted and the Notice of Deficiency issued October 27, 1975, is cancelled.

DATED: Albany, New York
April 26, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER