

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JOSEPH LETO

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 ~~(or years)~~ 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 26th day of August, 1977, she served the within
Notice of Decision by (certified) mail upon Robert Sheehan

(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Robert Sheehan, CPA
233 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

26th day of August, 1977.

Marsina Donnini

Janet M. M.

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

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JOSEPH LETO

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
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State of New York
County of Albany

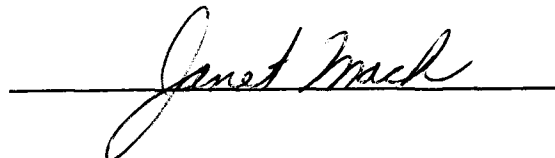
Marsina Donnini, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 26th day of August, 1977, she served the within Notice of Decision by (certified) mail upon Joseph Leto ~~(representative of)~~ the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mr. Joseph Leto
12 Lesley Drive
Syosset, Long Island, New York 11791
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 August, 1977.







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 26, 1977

Mr. Joseph Leto
12 Lesley Drive
Syosset, Long Island, New York 11791

Dear Mr. Leto:

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 **(b) 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,

Paul B. Coburn
Supervising Tax
Hearing Officer

cc: Petitioner's Representative
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
JOSEPH LETO	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Year	:	
1972.	:	

Petitioner, Joseph Leto, residing at 12 Lesley Drive, Syosset, Long Island, New York 11791, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1972.

(File No. 12681).

A formal hearing was held before Solomon Sies, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 18, 1977 at 3:30 P.M. The petitioner appeared by Robert Sheehan, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (Alexander Weiss, Esq., of counsel).

ISSUE

Whether the petitioner, Joseph Leto, is liable for unpaid withholding taxes due from Jacob Morgenthauers Sons, Inc. for the period January 1, 1972 to November 17, 1972.

FINDINGS OF FACT

1. On April 11, 1975, the Income Tax Bureau issued a Statement of Deficiency against petitioner, Joseph Leto, imposing a penalty equal to the total amount of unpaid withholding taxes for the period January 1 through November 17, 1972, to wit, \$12,220.73 due from Jacob Morgenthalers Sons, Inc., for his willful failure to pay over said withholding taxes as a responsible officer of the aforementioned corporation. Accordingly, a Notice of Deficiency was issued against the petitioner on April 11, 1975 for \$12,220.73.

2. Prior to and during 1972, Jacob Morgenthalers Sons, Inc. was a domestic corporation organized under the laws of the State of New York and engaged in the business of architectural woodwork. It maintained its place of business at 202 Fourth Avenue, Brooklyn, New York. Its officers consisted of Jack Howell, president, and the petitioner, Joseph Leto, secretary-treasurer, each of whom owned 50% of the shares of stock of the corporation.

3. Jacob Morgenthalers Sons, Inc. filed a petition in bankruptcy on or about November 17, 1972.

4. Jacob Morgenthalers Sons, Inc. withheld taxes from the salaries and wages of its employees for the period January 1,

1972 to November 17, 1972, in the amount of \$12,220.73. However, it made no remittance to the State because there was no cash available.

5. Both the petitioner and Jack Howell had authority to sign checks. The petitioner signed withholding tax statements in the absence of Mr. Howell. The petitioner and Mr. Howell each originally invested \$15,000.00. The petitioner made loans to the corporation to the extent of \$50,000.00, which amount has not been repaid to date. The petitioner received a salary of \$9,000.00 in 1972. Mr. Howell received \$25,000.00 salary in 1972. During the year 1972, Mr. Howell spent all of his time at the plant in connection with the operations of Jacob Morgenthalers Sons, Inc., whereas the petitioner only spent a small portion of his time at the plant.

6. The corporation was unable to pay the withholding taxes because of uncollectible accounts receivable.

7. The petitioner made loans to the corporation in August, September and October of 1972 in order to cover the net payroll.

8. The I.R.S. issued a Notice of Deficiency against the petitioner for wilful failure to pay over the Federal withholding taxes due from Jacob Morgenthalers Sons, Inc. for the same period in issue herein.

CONCLUSIONS OF LAW

A. That the petitioner knew or should have known that the corporation of which he was secretary-treasurer had failed to pay the withholding taxes withheld by it for the period January 1, 1972 to November 17, 1972, which constituted trust funds pursuant to the provisions of section 675 of the Tax Law.

B. That the petitioner, Joseph Leto, was a "person" required to collect, truthfully account for, and pay the withholding taxes on behalf of the employer Jacob Morgenthals Sons, Inc., within the intent and meaning of section 685(n) of the Tax Law.

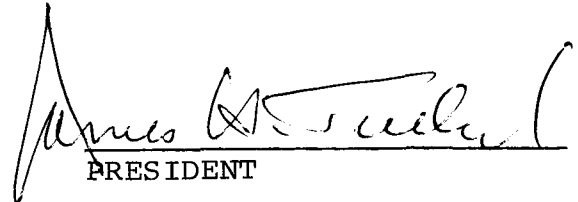
C. That the petitioner, Joseph Leto, wilfully failed to pay over the withholding taxes withheld by Jacob Morgenthals Sons, Inc. during the period January 1, 1972 to November 17, 1972 in the amount of \$12,220.73, within the intent and meaning of section 685(g) of the Tax Law. (Matter of Thomas Levin v. Gallman, et. al., - N.Y. 2nd -, decided June 14, 1977; Hartman v. U.S. 538F 2nd 1336, 1341.)

D. That the petitioner is liable for a 100% civil penalty for wilful failure to pay over the withholding tax due from Jacob Morgenthals Sons, Inc., for the period January 1, 1972 to November 17, 1972.

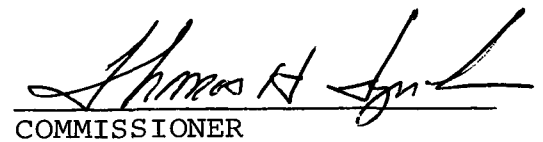
E. That the petition of Joseph Leto be and the same is hereby denied.

DATED: Albany, New York
August 26, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER