

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

RICHARD MAGER

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

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 18th day of January , 19 77, ~~he~~ served the within
Notice of Decision by (certified) mail upon Richard Mager
~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. Richard Mager
5 Hiawatha Lane
Smithtown, New York 11787
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)~~
~~XXXX~~ 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

18th day of January , 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

January 18, 1977

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

Mr. Richard Mager
5 Hiawatha Lane
Smithtown, New York 11787

Dear Mr. Mager:

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,

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 :
RICHARD MAGER :
for Redetermination of a Deficiency or : DECISION
for Refund of Personal Income Taxes under Article :
22 of the Tax Law for the Years 1971 and 1972. :

Petitioner, Richard Mager, residing at 5 Hiawatha Lane, Smithtown, New York, 11787, has 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 1971 and 1972 (File No. 11-2240224).

A small claims hearing was held before Joseph A. Milack, Small Claims Hearing Officer, on August 27, 1976, at 10:45 A.M., at the offices of the State Tax Commission, Two World Trade Center, New York, New York. The petitioner, Richard Mager, appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq., (Irwin Levy, Esq., of counsel).

ISSUE

Whether petitioner, Richard Mager, is liable for unpaid New York State withholding taxes due from Vending Maintenance Co., Inc. for the years 1971 and 1972?

FINDINGS OF FACT

1. The Vending Maintenance Co., Inc., failed to pay over to the Income Tax Bureau New York State personal income taxes withheld from its employees during the years 1971 and 1972 in the sum of \$657.20 and \$585.70, respectively. The corporation is presently insolvent.

2. On October 28, 1974, the Income Tax Bureau issued a Notice of Deficiency against petitioner, Richard Mager, imposing a penalty equal to the amount of New York State withholding taxes due from Vending Maintenance Co., Inc., for the years 1971 and 1972 upon the grounds that he was a person required to collect, truthfully account for and pay over said taxes and that he willfully failed to do so.

3. Petitioner, Richard Mager, was vice-president and treasurer of Vending Maintenance Co., Inc., until February 25, 1975, at which time he resigned as an officer and assumed the status of an employee. Prior to his resignation as an officer, he was privy to the financial condition of Vending Maintenance Co., Inc.; although he did not take an active role in financial matters. Subsequent to his resignation as an officer, he no longer was advised of the financial condition of the corporation.

4. Petitioner, Richard Mager, was authorized to sign checks and legal documents of the Vending Maintenance Co., Inc.

5. Petitioner, Richard Mager, was assessed by the Internal Revenue Service for the period April 1, 1972 through September 30, 1972, as a person liable for the collection and paying over of Federal income taxes withheld by the Vending Maintenance Co., Inc., from its employees. The Internal Revenue Service cancelled the assessment in light of his resignation as an officer of said corporation on February 25, 1972.

6. Petitioner, Richard Mager, contends that he was merely a titular officer of Vending Maintenance Co., Inc., and his sole duties were that of repairing and maintaining vending machines.

CONCLUSIONS OF LAW

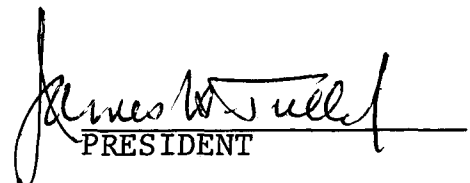
A. That petitioner, Richard Mager, was a person required to collect, truthfully account for and pay over New York State withholding taxes due from Vending Maintenance Co., Inc., for the period January 1, 1971 through February 25, 1972, in accordance with the meaning and intent of sections 674 and 685(n) of the Tax Law. He was not such a person after February 25, 1972, since he was no longer an officer of said corporation and ceased to be involved in corporate financial matters.

B. That petitioner, Richard Mager, did not sustain the burden of proof necessary to establish that he did not willfully fail or cause the Vending Maintenance Co., Inc., to willfully fail to collect, truthfully account for and pay over to New York State withholding taxes due from said corporation for the periods January 1, 1971 through February 25, 1972.

C. That the Notice of Deficiency issued on October 28, 1974, shall be recomputed to reflect the aforesaid conclusions.

DATED: Albany, New York
January 18, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER