

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

FRANCIS SERGIO

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Personal Income Taxes :  
Taxes under Article (X) 22 of the :  
Tax Law for the Year(s) ~~XXXXXX~~ :  
1970 & 1971

State of New York  
County of JoAlbany

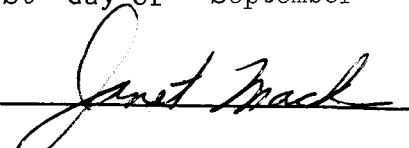
John Huhn , being duly sworn, deposes and says that  
~~he~~ is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 1st day of September , 19 77, ~~he~~ served the within  
Notice of Decision by (certified) mail upon Francis Sergio  
~~representative of~~ the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Francis Sergio  
1124 77th Street  
Brooklyn, New York 11228

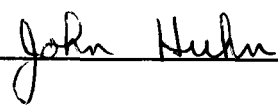
and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Postal Service within the State of New York.

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

1 St day of September , 1977.

  
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\_\_\_\_\_

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

FRANCIS SERGIO

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Personal Income :  
Taxes under Article ~~(8)~~ 22 of the :  
Tax Law for the Year(s) ~~XXXXXX~~ :  
1970 & 1971

State of New York  
County of Albany

John Huhn

, 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 1st day of September , 1977, she served the within

Notice of Decision by (certified) mail upon Guy M. Puca, Esq.

(representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed

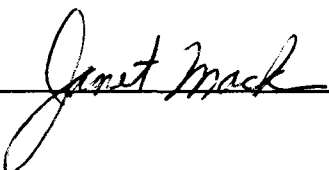
as follows: Guy M. Puca, Esq.  
175 Remsen St.  
Brooklyn, New York 11201

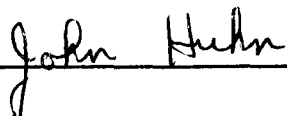
and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Postal Service within the State of New York.

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

1st day of September , 1977.







STATE OF NEW YORK  
STATE TAX COMMISSION  
TAX APPEALS BUREAU  
ALBANY, NEW YORK 12227

September 1, 1977

JAMES H. TULLY JR., PRESIDENT  
MILTON KOERNER  
THOMAS H. LYNCH

Francis Sergio  
1124 77th Street  
Brooklyn, New York 11228

Dear Sir:

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 ~~(4)~~ **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 Chirymaty*  
**JOSEPH CHIRYMATY**  
Hearing Examiner

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
FRANCIS SERGIO	:	DECISION
for Redetermination of a Deficiency	:	
or for Refund of Personal Income Taxes	:	
under Article 22 of the Tax Law for	:	
the Years 1970 and 1971.	:	

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Petitioner, Francis Sergio, residing at 1124 77th Street, Brooklyn, New York 11228, 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 1970 and 1971. (File No. 13-5080740).

A small claims hearing was held before Joseph Chyrywaty, Hearing Officer, on January 25, 1977 at 9:15 A.M. at the offices of the State Tax Commission, Two World Trade Center, New York, New York. The petitioner appeared with his representative, Guy M. Puca, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq., (Louis Senft, Esq. of counsel).

#### ISSUE

Is the petitioner, Francis Sergio, liable for unpaid New York State withholding taxes due from Foreign Shipping Service Co., Inc. for the year 1970 and the period June 1, 1971 through September 10, 1971?

FINDINGS OF FACT

1. Foreign Shipping Service Company, Inc. failed to pay over to the Income Tax Bureau New York State personal income taxes withheld from its employees during the year 1970 and for the period June 1, 1971 through September 10, 1971. The business is presently insolvent.

2. On October 28, 1974, the Income Tax Bureau issued a Statement of Deficiency against petitioner, Francis Sergio, imposing a penalty equal to the amount of New York State withholding taxes due from Foreign Shipping Service Company, Inc. for the year 1970 and the period June 1, 1971 through September 10, 1971, 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. In accordance with the aforesaid Statement of Deficiency, the Income Tax Bureau issued a Notice of Deficiency in the sum of \$2,708.10.

3. Petitioner, Francis Sergio, was hired by Foreign Shipping Service Company, Inc. as the controller in June, 1970. He remained an employee with the corporation until July 23, 1971 at which time he resigned. While employed by Foreign Shipping Service Co., Inc., he was primarily responsible to maintain the corporate accounting records. He also had the authority to sign New York State withholding tax returns. After working for the corporation for a month or so, he acquired the authority to sign checks, but signed only those checks which the corporate president instructed him to sign.

4. Petitioner, Francis Sergio, was not a shareholder in Foreign Shipping Service Company, Inc.; nor was he a corporate officer or a director of said corporation.

CONCLUSIONS OF LAW

A. That the petitioner, Francis Sergio, was not a responsible person required to collect, truthfully account for and pay over New York State withholding taxes due from Foreign Shipping Service Company, Inc. for the year 1970 and the period June 1, 1971 to September 10, 1971 in accordance with the meaning and intent of sections 674 and 685(g) of the Tax Law.

B. That the petition of Francis Sergio is sustained and the Notice of Deficiency dated October 28, 1974 is cancelled.

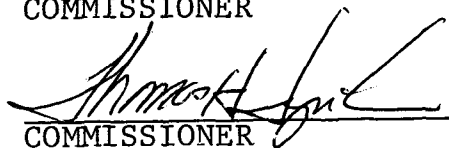
DATED: Albany, New York

September 1, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER