

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
JACK P. DEDERICK,
CATHERINE JOHNSON, AND
MADELINE FITZGERALD

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) ~~XXXXXX~~ Period(s) :
1973 and 1974.

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 13th day of September , 1978, ~~she~~ served the within
Notice of Decision by (certified) mail upon Jack P. Dederick

(~~representative of~~) the petitioner in the within proceeding,

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

Mr. Jack P. Dederick
Curriers Road
Arcade, New York 14009

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

13th day of September , 1978.

H. P. Walker

John Huhn

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

JACK P. ^{of} DEDERICK,
CATHERINE JOHNSON, AND
MADELINE FITZGERALD

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)~~ :
1973 and 1974.

State of New York
County of Albany

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 13th day of September , 1978, ~~he~~ served the within
Notice of Decision by (certified) mail upon Catherine Johnson
(~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Ms. Catherine Johnson
127 Buffalo Street
Canandaigua, New York 14424
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

13th day of September , 1978.

V. P. Walker
md

John Huhn

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
JACK P. DEDERICK,
CATHERINE JOHNSON, AND
MADELINE FITZGERALD
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)~~ :
1973 and 1974.

AFFIDAVIT OF MAILING

State of New York
County of Albany

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 13th day of September , 1978, ~~he~~ served the within
Notice of Decision by (certified) mail upon L. Edward Monaghan

(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: L. Edward Monaghan, Esq.
28 South Main Street
Canandaigua, New York 14424

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

13th day of September , 1978.

V. P. Walker
notary

John Huhn

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

JACK P. DEDERICK,
CATHERINE JOHNSON, AND
MADELINE FITZGERALD

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~~ 1973 and 1974.

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 13th day of September, 1978, she served the within
Notice of Decision by (certified) mail upon Madeline Fitzgerald

(~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Ms. Madeline Fitzgerald
P.O. Box 97
Holcomb, New York 14469

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~~
~~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

13th day of September, 1978.

VP Walker
205

John Huhn



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

September 13, 1978

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

**Mr. Jack P. Dederick
Curriers Road
Arcade, New York 14009**

Dear Mr. Dederick:

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 ~~(s)~~ **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,

**Michael Alexander
Supervising Tax
Hearing Officer**

cc: ~~Pratt & Whitney Representative~~

Taxing Bureau's Representative



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

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

September 13, 1978

**Ms. Catherine Johnson
127 Buffalo Street
Canandaigua, New York 14424**

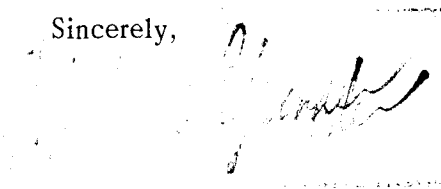
Dear Ms. Johnson:

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 **(a) 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,


**Michael Alexander
Supervising Tax
Hearing Officer**

cc: Petitioner's Representative
Taxing Bureau's Representative



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

September 13, 1978

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

**Ms. Madeline Fitzgerald
P.O. Box 97
Holcomb, New York 14469**

Dear Ms. Fitzgerald:

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 **(5) 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,

**Michael Alexander
Supervising Tax
Hearing Officer**

cc: ~~XXXXXXXXXXXXXXXXXXXX~~
Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petitions	:	
of	:	
JACK P. DEDERICK,	:	DECISION
CATHERINE JOHNSON, AND	:	
MADLINE FITZGERALD	:	
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article	:	
22 of the Tax Law for the Years 1973 and	:	
1974.	:	

Petitioners, Jack P. Dederick, Curriers Road, Arcade, New York 14009, Catherine Johnson, 127 Buffalo Street, Canandaigua, New York 14424, and Madeline Fitzgerald, P.O. Box 97, Holcomb, New York 14469, filed petitions for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1973 and 1974 (File Nos. 10497, 10498, and 10776).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, One Marine Midland Plaza, Rochester, New York, on November 15, 1976 at 1:30 P.M. Petitioners Jack P. Dederick and Madeline Fitzgerald appeared pro se. Petitioner Catherine Johnson appeared by Edward Monaghan, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Richard M. Kaufman, Esq., of counsel).

ISSUE

Whether petitioners are liable to a penalty equal to unpaid New York State withholding taxes due from Beverage Transport, Inc. for the years 1973 and 1974.

FINDINGS OF FACT

1. Beverage Transport, Inc. of East Bloomfield, New York, failed to pay over to New York State income taxes withheld from the wages of its employees for periods in 1973 and 1974 in the amount of \$5,629.52.

2. On October 27, 1975, the Income Tax Bureau issued statements of deficiency against individual petitioners, Jack P. Dederick, Catherine Johnson, and Madeline Fitzgerald, equal to the amount of New York State withholding taxes due from Beverage Transport, Inc. for the periods June 16, 1973 to June 30, 1973, July 1, 1973 to July 10, 1973, September 1, 1974 to September 15, 1974, September 16, 1974 to September 30, 1974 and October 1, 1974 to December 31, 1974. Said statements were issued on the grounds that petitioners were persons required to collect, truthfully account for and pay over said taxes and that they willfully failed to do so. Accordingly, the Income Tax Bureau issued notices of deficiency to petitioners in the amount of \$5,629.52.

3. Petitioner Jack P. Dederick was an officer (vice-president) and an employee of Beverage Transport, Inc. from August 1, 1973 to September 21, 1974. He ran the operational end of the business (which involved the hauling of foodstuffs and beer) and signed checks on a day-to-day basis, all of which had to be approved. This included the payroll. During his term of employment, he saw to it that the appropriate taxes were paid. The company's failure to continue payment of its taxes, plus other factors, led to his resignation. All checks signed by him were signed as a matter of convenience, since the company's president lived outside New York State. The company was under Chapter 11 bankruptcy proceedings when petitioner Jack Dederick was asked to return in April of 1975 to aid the trustees.

4. Petitioner Madeline Fitzgerald was the wife of one Jim F. Fitzgerald, the former president of Beverage Transport, Inc. She was separated from him in 1973 and secured a divorce in 1974. She was an officer of said corporation until 1969, but had never been on said company's payroll, nor had she ever been a stockholder.

5. Petitioner Catherine Johnson was a bookkeeper for Beverage Transport, Inc. She was one of five girls working in the office and she handled the payroll, payroll reports, bank statements, accounts receivable and accounts payable. Her immediate supervisor was Bill Petterson, the accountant. She was never an officer or stockholder of Beverage Transport, Inc. Her employment terminated in October of 1973.

CONCLUSIONS OF LAW

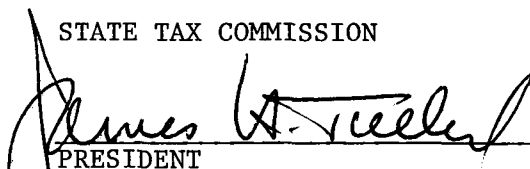
A. That petitioners, Catherine Johnson and Madeline Fitzgerald, were not responsible officers who willfully failed to collect, truthfully account for and pay over New York State withholding taxes due from Beverage Transport, Inc. for the periods at issue; therefore, a penalty equal to the amount of unpaid withholding taxes should not have been assessed against them in accordance with the meaning and intent of sections 685(g) and 685(n) of the Tax Law.

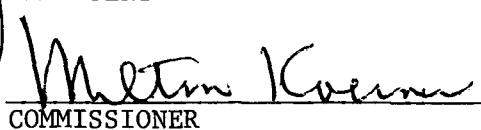
B. That petitioner Jack P. Dederick, an officer of Beverage Transport, Inc., did not willfully fail to collect, truthfully account for and pay over New York State withholding taxes due from said company for the periods in issue; therefore, a penalty equal to the amount of unpaid withholding taxes should not have been assessed against him in accordance with the meaning and intent of section 685(g) and 685(n) of the Tax Law.

C. That the petitions of Jack P. Dederick, Catherine Johnson, and Madeline Fitzgerald are granted and the notices of deficiency issued October 27, 1975 are cancelled.

DATED: Albany, New York
September 13, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER