

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JOSEPH TAVOLACCI

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article (s) 22 of the :
Tax Law for the Year(s) ~~or Period(s)~~ :
1972 and 1973.

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 1st day of September , 1978 , he served the within

Notice of Decision by (certified) mail upon Joseph Tavolacci

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

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

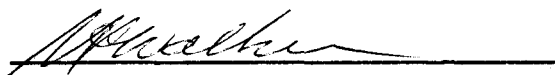
as follows: Mr. Joseph Tavolacci
278 Terry Road
Smithtown, New York 11787

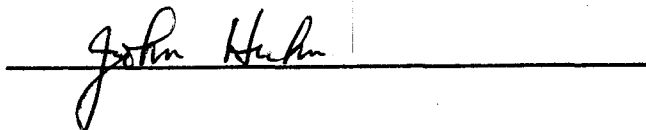
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the ~~(representative~~
~~of 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 , 1978





STATE OF NEW YORK
STATE TAX COMMISSION

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of

JOSEPH TAVOLACCI

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For a Redetermination of a Deficiency or :
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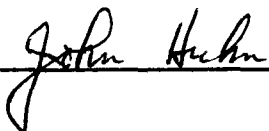
John Huhn , being duly sworn, deposes and says that
he is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 1st day of September , 19 78, he served the within
Notice of Decision by (certified) mail upon David A. Field
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: David A. Field
DiFalco Field Lomenzo & O'Rourke
605 Third Avenue
New York, New York 10016
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 , 1978.







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 1, 1978

Mr. Joseph Tavalacci
278 Terry Road
Smithtown, New York 11787

Dear Mr. Tavalacci:

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(x) **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

In the Matter of the Petition	:	
of	:	
JOSEPH TAVOLACCI	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Years	:	
1972 and 1973.	:	

Petitioner, Joseph Tapolacci, 278 Terry Road, Smithtown, New York 11787, 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 1972 and 1973 (File No. 18472).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 24, 1977 at 9:15 a.m. Petitioner appeared by David A. Field, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Irving Atkins, Esq., of counsel).

ISSUE

Whether petitioner was liable for a penalty under section 685(g) of the Tax Law for unpaid New York State withholding taxes due from Gamma Electrical Contractors & Consultants, Inc. for the years 1972 and 1973.

FINDINGS OF FACT

1. On July 29, 1974, the Income Tax Bureau issued a Statement of Deficiency against petitioner, Joseph Tavolacci, equal to the amount of New York State withholding taxes due from Gamma Electrical Contractors & Consultants, Inc. (hereinafter "Gamma"), for the periods May 1, 1972 to June 30, 1972, July 1, 1972 to December 30, 1972, and January 1, 1973 to June 29, 1973. The Statement was issued on the grounds that petitioner was a person required to collect, truthfully account for and pay over said taxes and that he willfully failed to do so. Accordingly, the Income Tax Bureau issued a Notice of Deficiency against petitioner on July 29, 1974 in the amount of \$6,288.50.

2. Petitioner, Joseph Tavolacci, was president of Gamma, located in Hauppauge, New York. Said company became bankrupt in 1973.

3. Gamma did not file New York State withholding tax returns, nor pay withholding tax due for the periods May 1, 1972 to June 30, 1972, July 1, 1972 to December 30, 1972, and June 1, 1973 to June 29, 1973. In 1971 total tax withheld was \$7,600.00.

4. The Income Tax Bureau estimated the withholding tax liabilities of Gamma for the periods in issue.

5. Petitioner, Joseph Tavolacci, offered no documentary or other substantial evidence that he was not an active fiscal officer of Gamma.

CONCLUSIONS OF LAW

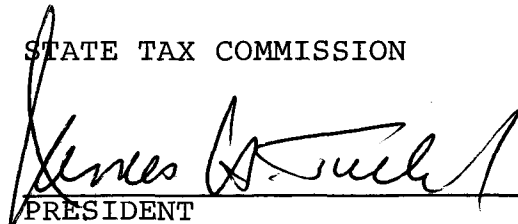
A. That petitioner, Joseph Tavalacci, as president and as an active fiscal officer of Gamma Electrical Contractors & Consultant, Inc., was a person required to collect, truthfully account for and pay over New York State withholding taxes due from said corporation for the periods May 1, 1972 to June 30, 1972, July 1, 1972 to December 30, 1972 and January 1, 1973 to June 29, 1973 in accordance with the meaning and intent of section 685(n) of the Tax Law.

B. That since petitioner, Joseph Tavalacci, willfully failed to account for and pay over New York State withholding taxes due from Gamma Electrical Contractors & Consultants, Inc. for the periods May 1, 1972 to June 30, 1972, July 1, 1972 to December 30, 1972 and January 1, 1973 to June 29, 1973, therefore a penalty equal to the amount of the estimated unpaid withholding taxes was properly asserted against him, in accordance with the meaning and intent of sections 681(a) and 685(g) of the Tax Law.

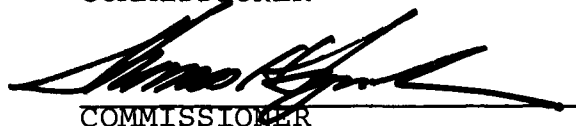
C. That the petition of Joseph Tavalacci is denied and the Notice of Deficiency issued July 29, 1974 is sustained.

DATED: Albany, New York
September 1, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER