

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

John C. Buttolph :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :

of a Determination or a Refund of

Personal Income Tax :

under Article 22 of the Tax Law

for the Years 1971 - 1973. :

State of New York

County of Albany

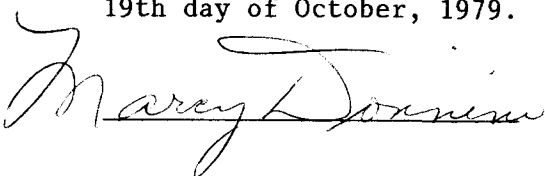
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 19th day of October, 1979, he served the within notice of Decision by certified mail upon John C. Buttolph, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

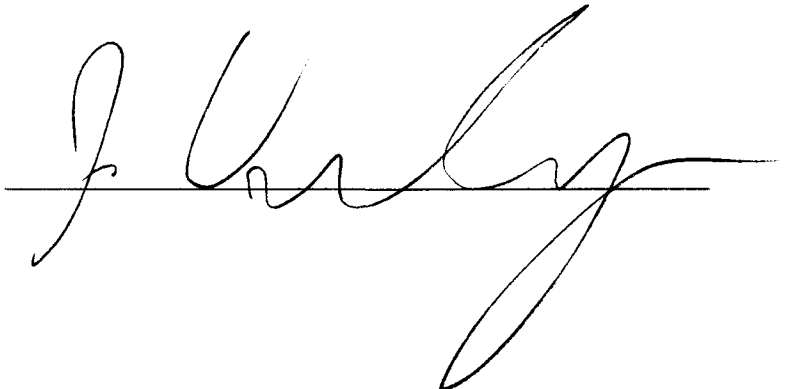
John C. Buttolph
142 Woodbine Ave.
Merrick, NY 11566

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 petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
19th day of October, 1979.


Mary L. Donnan


Jay Vredenburg

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

October 19, 1979

John C. Buttolph
142 Woodbine Ave.
Merrick, NY 11566

Dear Mr. Buttolph:

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:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
JOHN C. BUTTOLPH	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Years	:	
1971 through 1973.	:	

Petitioner, John C. Buttolph, 142 Woodbine Avenue, Merrick, New York 11566, 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 through 1973 (File No. 12538).

A formal hearing was held before Neil Fabricant, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on December 5, 1977 at 9:15 A.M. Petitioner appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq. (Irwin A. Levy, Esq., of counsel).

ISSUE

Whether the amount of the deficiency imposed against petitioner under section 685(g) of the Tax Law represented the correct amount of unpaid withholding tax of Island Park Plumbing and Heating Corporation for 1971, 1972 and 1973.

FINDINGS OF FACT

1. Petitioner, John Charles Buttolph, was president and fifty-percent stockholder of Island Park Plumbing and Heating Corporation ("Island Park").

2. On December 23, 1974, the Income Tax Bureau issued a Statement of Deficiency to petitioner, stating that he was a "person" as defined under section 685(n) of the Tax Law; therefore, he was liable for a penalty under section 685(g) of the Tax Law in the amounts of \$2,639.91 for the period September 1, 1971 through December 31, 1971, \$7,468.62 for the period October 1, 1972 through December 31, 1972, and \$14,899.69 for the period April 1, 1973 through August 31, 1973, for a total of \$25,007.63.

3. On December 23, 1974, the Income Tax Bureau issued a Notice of Deficiency against petitioner, asserting the penalty of \$25,007.63 stated above.

4. Petitioner acknowledged his liability for the penalty of \$14,899.69 asserted for the period April 1, 1973 through August 31, 1973.

5. Petitioner contended that the total of the payments made by Island Park equals the amount of tax withheld for 1971 and 1972.

6. Three of the payments made by Island Park were in payment of two collection cases which included not only tax, but also penalty and interest.

CONCLUSIONS OF LAW

A. That petitioner was a person required to collect, truthfully account for and pay over withholding taxes due from Island Park, and that he willfully failed to do so within the meaning of subsections (n) and (g) of section 685 of the Tax Law; therefore, he is liable for the penalty imposed under subsection (g) of section 685 of the Tax Law.

B. That petitioner has failed to sustain the burden of proof imposed by section 689(e) of the Tax Law which requires him to establish that all payments made by Island Park for 1971 and 1972 were, in fact, payment of tax only and were not in payment of tax, penalty and/or interest.

C. That the petition of John C. Buttolph is denied and the Notice of Deficiency issued on December 23, 1974 is sustained.

DATED: Albany, New York

OCT 19 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER