

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

DUARD HALE

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) ~~XXXXXX~~ :
1972.

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 4th day of May, 19 79, he served the within
Notice of Decision by (certified) mail upon Duard Hale

~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows:

Duard Hale
311 Riverglen Road
Liverpool, NY 13088

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)~~
~~XXXXXX~~ 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

4th day of May, 19 79

Maureen J. Papineau

John Huhn

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

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DUARD HALE

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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) ~~XXXXXX~~ :
1972.

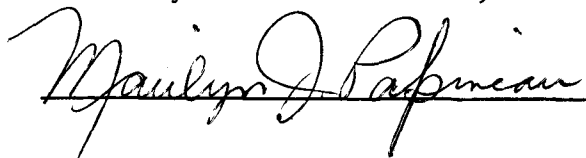
State of New York
County of Albany

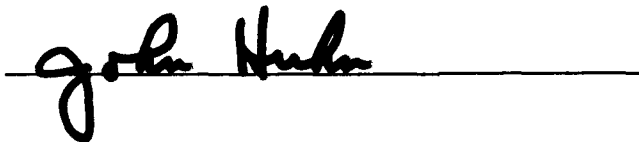
John Huhn, being duly sworn, deposes and says that
he is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 4th day of May, 1979, he served the within
Notice of Decision by (certified) mail upon William F. Carrigan
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: William F. Carrigan, Esq.
443 South Warren St.
Syracuse, NY 13202
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

4th day of May, 1979







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

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

May 4, 1979

Mr. Duard Hale
311 Riverglen Road
Liverpool, New York 13088

Dear Mr. Hale:

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: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
DUARD HALE	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Year	:	
1972.	:	

Petitioner, Duard Hale, 311 Riverglen Road, Liverpool, New York 13088, filed an application for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1972 (File No. 11713).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, State Office Building, Syracuse, New York, on December 5, 1977 at 1:15 P.M. Petitioner appeared by William F. Carrigan, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (James J. Morris, Esq., of counsel).

ISSUE

Whether petitioner was subject to a penalty equal to unpaid New York State withholding taxes due from Durkee's Domestic Bakery, Inc. and Durkee's Bakery of Carthage for the period July 1, 1972 to October 25, 1972.

FINDINGS OF FACT

1. On September 24, 1973, the Income Tax Bureau issued a Statement of Deficiency against petitioner, Duard Hale. It imposed a penalty of \$19,663.76 against him (in accordance with section 685(g) of the Tax Law) as a person who willfully failed to collect, truthfully account for and pay over personal income tax withheld in said amount by Durkee's Domestic Bakery, Inc. and Durkee's Bakery of Carthage. Accordingly, the Income Tax Bureau issued a Notice of Deficiency for \$19,663.76 on September 24, 1973.

2. Petitioner, Duard Hale, was employed in the bakery business for some thrity-one years. He was hired by Durkee's Domestic Bakery, Inc. in August of 1970 as general manager, and was responsible for production and maintenance, as well as for the increase of sales. He had two hundred employees on the sales' force. In December of 1971, he was elected a vice-president. His salary remained the same throughout his employment and his duties continued until September 29, 1972, when he was discharged. In the latter part of June 1972, the company merged with a Kansas firm. Petitioner never signed any checks for Durkee and didn't know if he was even so authorized. After the merger, the company closed their local bank accounts and transferred them to Cleveland, Ohio. Petitioner never owned any stock in the companies. He had nothing to do with filing company tax returns and assumed that taxes were being paid. He knew that there were financial problems. The company closed its doors about ten days after his discharge and

eventually went into bankruptcy. He was never an officer, director, or stockholder of the merged company, or of the company that took over the operation of either Durkee company.

CONCLUSIONS OF LAW

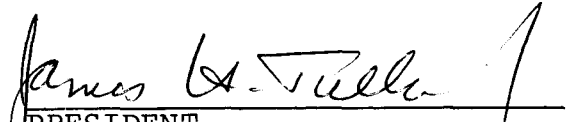
A. That petitioner, Duard Hale, was not a person who willfully failed to collect, truthfully account for and pay over New York State withholding taxes due from Durkee's Domestic Bakery, Inc. and Durkee's Bakery of Carthage for the periods in issue; therefore, a penalty equal to the amount of unpaid withholding taxes should not have been assessed against him under sections 685(g) and 685(n) of the Tax Law.

B. That the petition of Duard Hale is granted and the Notice of Deficiency issued September 24, 1973 is cancelled.

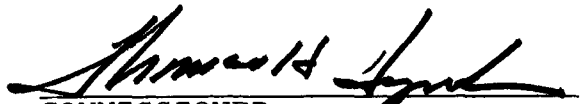
DATED: Albany, New York

STATE TAX COMMISSION

May 4, 1979


PRESIDENT


COMMISSIONER


COMMISSIONER