

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :

of

Stephen Licata :

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 Year 1968. :

State of New York

County of Albany

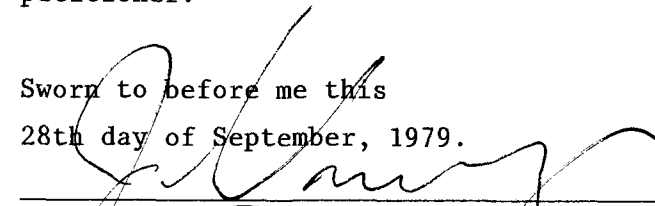

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 28th day of September, 1979, he served the within notice of Decision by certified mail upon Stephen Licata, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Stephen Licata  
32 Makamah Rd.  
Northport, NY

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  
28th day of September, 1979.



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

STATE TAX COMMISSION

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

JOHN J. SOLLECITO  
DIRECTOR

Telephone: (518) 457-1723

September 28, 1979

Stephen Licata  
32 Makamah Rd.  
Northport, NY

Dear Mr. Licata:

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,

A handwritten signature in cursive script, appearing to read "Robert D. Sullivan".

cc: ~~Petitioner's Representative~~

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

---

In the Matter of the Petitions	:	
of	:	
STEPHEN LICATA	:	DECISION
for Redetermination of a Deficiency	:	
or for Refund of Personal Income Tax	:	
under Article 22 of the Tax Law for	:	
the Year 1968.	:	

---

Petitioner, Stephen Licata, 32 Makamah Road, Northport, New York, filed petitions for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1968 (File Nos. 13498 and 13499).

A formal hearing was held before William J. Dean, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on September 28, 1977 at 9:15 A.M. Petitioner appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq. (Francis Cosgrove, Esq., of counsel).

ISSUE

Whether petitioner was a person required to collect, account for and pay over taxes withheld from the employees of Jayell Construction Corporation.

FINDINGS OF FACT

1. Jayell Construction Corporation ("Jayell") failed to pay over to the Income Tax Bureau New York State personal income taxes withheld from the wages of its employees for the periods February 1, 1968 through February 28, 1968 and March 1, 1968 through December 31, 1968.

2. The Income Tax Bureau issued two notices of deficiency against petitioner, Stephen Licata, imposing a penalty pursuant to section 685(g) of the Tax Law for amounts equal to the tax withheld by Jayell from its employees. This was done 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. One Notice of Deficiency was issued on December 27, 1971 and imposed a penalty of \$217.70 for the period February 1, 1968 to February 28, 1968. A second Notice of Deficiency was issued on November 25, 1974 and imposed a penalty of \$4,648.24 for the period March 1, 1968 through December 31, 1968.

3. During the period at issue, petitioner was a president of Jayell. Jayell did concrete work as a subcontractor at a construction site in Westchester County. Jayell encountered severe financial difficulties and advised Alexander-Jennings Construction Corporation ("Alexander-Jennings"), the general contractor, of its difficulties.

4. Alexander-Jennings orally agreed to pay all the operating expenses incurred by Jayell so that work could continue. In accordance with this agreement, Jayell would supply Alexander-Jennings with its daily time sheets which listed the names of workers on the job and the hours which they worked. At the close of each week, Alexander-Jennings would give petitioner a check covering the net amount of the payroll, and the employees were then paid with a check from Jayell.

5. When taxes which were withheld from wages of Jayell's employees became due, Jayell would present Alexander-Jennings with a detailed worksheet with the understanding that Alexander-Jennings was to draw a check for the balance due, and send it to the New York State Department of Taxation and Finance.

6. For the periods at issue, Jayell failed to remit to the New York State Department of Taxation and Finance, the moneys which were withheld from the wages of its employees. Alexander-Jennings also failed to pay over to the Department of Taxation and Finance taxes which were withheld from the wages of Jayell's employees.

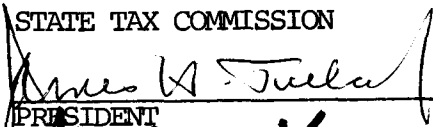
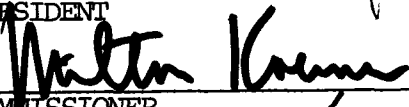
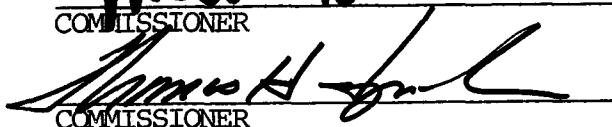
CONCLUSIONS OF LAW

A. That petitioner, Stephen Licata, was a person required to collect, truthfully account for and pay over New York State withholding taxes due from Jayell Construction Corporation for the periods February 1, 1968 to February 28, 1968 and March 1, 1968 to December 31, 1968, within the meaning and intent of subsection (n) of section 685 of the Tax Law; that petitioner willfully failed or caused Jayell Construction Corporation to willfully fail to collect, truthfully account for and pay over New York State withholding taxes due for the periods at issue; therefore, petitioner is subject to a penalty equal to the total amount of unpaid withholding taxes due from said corporation, under subsection (g) of section 685 of the Tax Law.

B. That the petitions of Stephen Licata are denied and the notices of deficiency dated December 27, 1971 and November 25, 1974 are sustained.

DATED: Albany, New York

SEP 28 1979

STATE TAX COMMISSION  
  
PRESIDENT  
  
COMMISSIONER  
  
COMMISSIONER