

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Anthony Mansueto :
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 1973-1975. :

AFFIDAVIT OF MAILING

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 12th day of December, 1980, he served the within notice of Decision by certified mail upon Anthony Mansueto, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Anthony Mansueto
537 W. Arlington Pl.
Chicago, IL

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
12th day of December, 1980.

Joan Schultz

Jay Vredenburg

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

December 12, 1980

Anthony Mansueto
537 W. Arlington Pl.
Chicago, IL

Dear Mr. Mansueto:

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 :
ANTHONY MANSUETO : DECISION
for Redetermination of a Deficiency or :
for Refund of Personal Income Tax under :
Article 22 of the Tax Law for the Years :
1973 through 1975. :

Petitioner, Anthony Mansueto, 537 West Arlington Place, Chicago, Illinois, 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 1973 through 1975 (File No. 19676).

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 January 29, 1980 at 9:15 A.M. Petitioner appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (Abraham Schwartz, Esq., of counsel).

ISSUE

Whether petitioner was a person required to collect and pay over personal income taxes withheld from the employees of McKee-Berger-Mansueto, Inc.

FINDINGS OF FACT

1. By Notice of Deficiency dated April 21, 1977, the Audit Division notified petitioner of a deficiency in the amount of \$104,064.94. The claims against petitioner related to unpaid withholding taxes of McKee-Berger-Mansueto, Inc. (herein "MBM") for various withholding tax periods during the years in question.

2. At the formal hearing, the Audit Division agreed that the deficiency should be reduced from \$104,064.94 to \$59,350.88.

3. MBM was a construction consulting firm performing services for a variety of clients, private, public and institutional, primarily in the United States, but abroad as well. As a construction consulting firm, MBM provided estimating and consulting services to the owner or developer of a project who might not have the in-house ability to monitor the work of the architect and general contractor on the project to insure that the project was brought in on time and within the approved budget.

4. Petitioner was a founder of MBM and a member of the Board of Directors. He served as a Vice-President during the period in question and as Treasurer until July, 1973. From September, 1971 through September, 1977, petitioner was physically based in Chicago.

5. Petitioner's activities on behalf of MBM were in the areas of marketing and sales. He was responsible for obtaining major contracts for MBM with the Chicago Board of Education and the Government of Puerto Rico's Public Building Authority. He was also responsible for the marketing of MBM services in Denver with Mountain Bell and with the City of Denver, and for the marketing of MBM services with the San Francisco Unified School District. His services in the marketing effort included making contact with potential clients and advancing MBM's capabilities and experience through face-to-face selling.

6. During the period in question, petitioner did not sign payroll checks. He had no involvement with the preparation of the payroll. He did sign certain checks in Chicago, but these were checks drawn solely on a petty cash fund. MBM payroll checks were authorized and prepared by the head office in New York.

7. While petitioner was aware of the delinquency of MBM to the State of New York, he was not authorized to direct the payment of the tax delinquency. Petitioner's responsibilities did not extend to managing the financial affairs

of the corporation.

CONCLUSIONS OF LAW

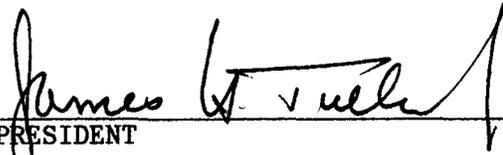
A. That petitioner was not a person under a duty to collect and pay over withholding tax within the meaning of subdivisions (g) and (n) of section 685 of the Tax Law. Petitioner's responsibility at MBM was in the area of marketing and sales. During the entire period in question he was based in Chicago away from the corporation's New York headquarters where payroll checks were authorized and issued. Petitioner had personal knowledge of MBM's tax deficiency, but his responsibility did not extend to managing the financial affairs of the corporation. With no responsibility for corporate financial matters, and based in Chicago the entire time, petitioner held the title of Treasurer until July, 1973 on a nominal basis only.

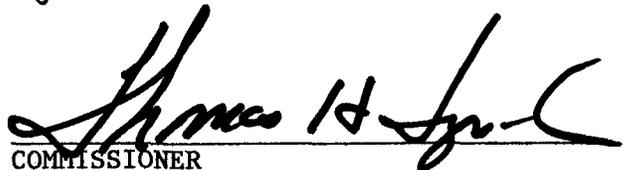
B. That the petition of Anthony Mansueto is granted and the Notice of Deficiency dated April 21, 1977 is cancelled.

DATED: Albany, New York

DEC 12 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

Inclained

Decided from
PS Form 3848-A
Feb. 1978

RETURN

1-12-81

18-81

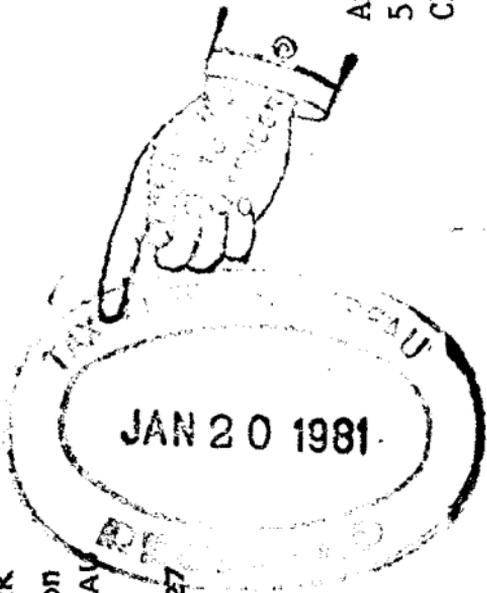
OFFICE

HOLD



Anthony M. Casueto
537 W. Arlington Pl.
Chicago, IL

TA 26 (9-79)
STATE OF NEW YORK
State Tax Commission
TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N. Y. 12227



8915140

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

December 12, 1980

Anthony Mansueto
537 W. Arlington Pl.
Chicago, IL

Dear Mr. Mansueto:

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
ANTHONY MANSUETO
for Redetermination of a Deficiency or
for Refund of Personal Income Tax under
Article 22 of the Tax Law for the Years
1973 through 1975.

DECISION

Petitioner, Anthony Mansueto, 537 West Arlington Place, Chicago, Illinois, 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 1973 through 1975 (File No. 19676).

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 January 29, 1980 at 9:15 A.M. Petitioner appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (Abraham Schwartz, Esq., of counsel).

ISSUE

Whether petitioner was a person required to collect and pay over personal income taxes withheld from the employees of McKee-Berger-Mansueto, Inc.

FINDINGS OF FACT

1. By Notice of Deficiency dated April 21, 1977, the Audit Division notified petitioner of a deficiency in the amount of \$104,064.94. The claims against petitioner related to unpaid withholding taxes of McKee-Berger-Mansueto, Inc. (herein "MBM") for various withholding tax periods during the years in question.

2. At the formal hearing, the Audit Division agreed that the deficiency should be reduced from \$104,064.94 to \$59,350.88.

3. MBM was a construction consulting firm performing services for a variety of clients, private, public and institutional, primarily in the United States, but abroad as well. As a construction consulting firm, MBM provided estimating and consulting services to the owner or developer of a project who might not have the in-house ability to monitor the work of the architect and general contractor on the project to insure that the project was brought in on time and within the approved budget.

4. Petitioner was a founder of MBM and a member of the Board of Directors. He served as a Vice-President during the period in question and as Treasurer until July, 1973. From September, 1971 through September, 1977, petitioner was physically based in Chicago.

5. Petitioner's activities on behalf of MBM were in the areas of marketing and sales. He was responsible for obtaining major contracts for MBM with the Chicago Board of Education and the Government of Puerto Rico's Public Building Authority. He was also responsible for the marketing of MBM services in Denver with Mountain Bell and with the City of Denver, and for the marketing of MBM services with the San Francisco Unified School District. His services in the marketing effort included making contact with potential clients and advancing MBM's capabilities and experience through face-to-face selling.

6. During the period in question, petitioner did not sign payroll checks. He had no involvement with the preparation of the payroll. He did sign certain checks in Chicago, but these were checks drawn solely on a petty cash fund. MBM payroll checks were authorized and prepared by the head office in New York.

7. While petitioner was aware of the delinquency of MBM to the State of New York, he was not authorized to direct the payment of the tax delinquency. Petitioner's responsibilities did not extend to managing the financial affairs

of the corporation.

CONCLUSIONS OF LAW

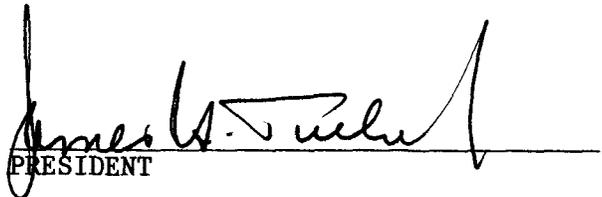
A. That petitioner was not a person under a duty to collect and pay over withholding tax within the meaning of subdivisions (g) and (n) of section 685 of the Tax Law. Petitioner's responsibility at MBM was in the area of marketing and sales. During the entire period in question he was based in Chicago away from the corporation's New York headquarters where payroll checks were authorized and issued. Petitioner had personal knowledge of MBM's tax deficiency, but his responsibility did not extend to managing the financial affairs of the corporation. With no responsibility for corporate financial matters, and based in Chicago the entire time, petitioner held the title of Treasurer until July, 1973 on a nominal basis only.

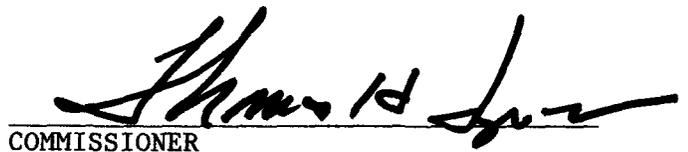
B. That the petition of Anthony Mansueto is granted and the Notice of Deficiency dated April 21, 1977 is cancelled.

DATED: Albany, New York

DEC 12 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER