

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Richard B. Rapport :
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 1974 & 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 31st day of October, 1980, he served the within notice of Decision by certified mail upon Richard B. Rapport, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Richard B. Rapport
59 Huxley Dr.
Snyder, NY 14226

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
31st day of October, 1980.

Deborah A Bank

Jay Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of

Richard B. Rapport :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
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Personal Income Tax :
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for the Years 1974 & 1975. :

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 31st day of October, 1980, he served the within notice of Decision by certified mail upon Arnold N. Zelman the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

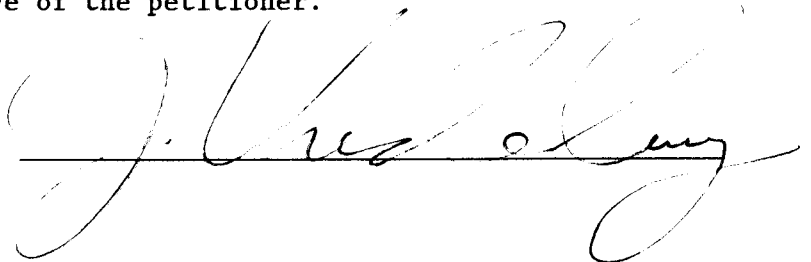
Mr. Arnold N. Zelman
1360 Statler Hilton
Buffalo, NY 14202

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
31st day of October, 1980.

Deborah A Bank



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

October 31, 1980

Richard B. Rapport
59 Huxley Dr.
Snyder, NY 14226

Dear Mr. Rapport:

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
Arnold N. Zelman
1360 Statler Hilton
Buffalo, NY 14202
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :

of :

RICHARD B. RAPPORT :

DECISION

for Redetermination of a Deficiency or :
for Refund of Personal Income Tax
under Article 22 of the Tax Law for :
the Years 1974 and 1975.

Petitioner, Richard B. Rapport, 59 Huxley Drive, Snyder, New York 14226, 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 1974 and 1975 (File No. 15150).

A formal hearing was held before Allen R. Golkin, Hearing Officer, at the offices of the State Tax Commission, State Office Building, 65 Court Street, Buffalo, New York, on September 19, 1978. Petitioner appeared by Arnold N. Zelman, Esq. The Audit Division appeared by Peter Crotty, Esq. (Barry Bressler, Esq., of counsel).

ISSUE

Whether petitioner is liable for a penalty under section 685(g) of the Tax Law in an amount equal to the unpaid withholding taxes of Associated Planning and Development Corp.

FINDINGS OF FACT

1. On March 29, 1976, the Audit Division issued a Notice of Deficiency and a Statement of Deficiency against petitioner, Richard B. Rapport, imposing a penalty equal to the unpaid withholding taxes of Associated Planning and Development Corp. in the following amounts:

1/1 - 4/30/74	\$ 701.83
8/1 - 8/31/74	624.41
9/1 - 9/30/74	231.33
10/1 - 10/31/74	251.72
11/1 - 11/30/74	242.86
1/1 - 1/15/75	<u>101.48</u>
TOTAL DUE	\$2,153.63

This penalty was imposed under section 685(g) of the Tax Law.

2. Petitioner was initially employed by Associated Planning and Development Corp. and became a minority stockholder thereof in late 1970 or early 1971, serving as Treasurer and a member of the Board of Directors.

3. Petitioner served at the pleasure of the majority stockholder, one Pasquale Cipolla, and functioned solely in accordance with the directions of Mr. Cipolla.

4. Petitioner ceased functioning actively in any way after only about one (1) year on the corporation's first project, said petitioner did no work, drew no salary and served no functions thereafter, including during the periods at issue herein.

5. Solely Mr. Cipolla and not petitioner ran the corporation, created and utilized bank accounts, hired and fired employees, and controlled financial management and tax reports, and payment of bills.

6. In March, 1974, petitioner resigned as officer and director and surrendered his stock to Mr. Cipolla.

7. Petitioner first became aware of deficiencies in 1976 when he received the aforesaid notice. Though he was an officer and director until March, 1974, petitioner lacked any authority over any affairs of the corporation and had little (if any) knowledge of its activities.

8. Petitioner never prepared tax returns nor did he ever sign corporate checks.

CONCLUSIONS OF LAW

A. That petitioner, Richard B. Rapport, was not a person required to collect, truthfully account for and pay over New York State personal income taxes withheld by Associated Planning and Development Corp. within the meaning of subsection (g) of section 685 of the Tax Law.

B. That the petition of Richard B. Rapport is granted and the Notice of Deficiency issued March 29, 1976 is cancelled.

DATED: Albany, New York

OCT 31 1980

STATE TAX COMMISSION

James W. Teale
PRESIDENT

Shmuel J. C.
COMMISSIONER

Francis R. Koenig
COMMISSIONER