

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

SONDRA WILSON

AMENDED
DECISION

for Redetermination of a Deficiency or for
Refund of New York State Personal Income Tax
under Article 22 of the Tax Law and New York
City Personal Income Tax under Chapter 46,
Title T of the Administrative Code of the City :
of New York for the Years 1977, 1978 and 1979.

Petitioner, Sondra Wilson, 69-10 108th Street, Forest Hills, New York
11375, filed a petition for redetermination of a deficiency or for refund of New
York State personal income tax under Article 22 of the Tax Law and New York
City personal income tax under Chapter 46, Title T of the Administrative Code
of the City of New York for the years 1977, 1978 and 1979 (File No. 45439).

On July 18, 1985, petitioner advised the State Tax Commission, in writing,
that she desired to waive a hearing and to submit the case to the State Tax
Commission upon the entire record contained in the file with submission of
additional evidence and documents by August 24, 1985. After due consideration
of said record, the Commission renders the following decision.

ISSUES

I. Whether petitioner, Sondra Wilson, is subject to penalties pursuant to
section 685(g) of the Tax Law and section ~~T46-185.0~~(g) of the Administrative
Code of the City of New York, as a person who willfully failed to collect,
truthfully account for and pay over the New York State and City withholding
taxes due from Isramkar Ltd. for the years 1977, 1978 and 1979.

11. Whether the Notice of Deficiency was barred by the expiration of the period of limitations on assessment.

FINDINGS OF FACT

1. Isramkar Ltd., 350 5th Avenue, New York, New York 10001, failed to pay over the New York State and New York City personal income taxes withheld from the wages of its employees for the following periods:

<u>Withholding Tax Period</u>	<u>Amount</u>
July 1, 1977 through December 31, 1977	\$ 4,965.05
January 1, 1978 through December 31, 1978	7,058.22
January 1, 1979 through December 31, 1979	<u>7,368.34</u>
TOTAL	<u>\$19,391.61</u>

2. On April 25, 1983, the Audit Division issued a Statement of Deficiency in conjunction with a Notice of Deficiency against Sondra Wilson (hereinafter "petitioner") wherein penalties were asserted pursuant to section 685(g) of the Tax Law and section T46-185.0(g) of the Administrative Code of the City of New York for amounts equal to the total New York State and New York City withholding taxes due from Isramkar Ltd. for the aforesated periods. Said penalties were asserted on the grounds that petitioner was a **person** required to collect, truthfully account for and pay over the withholding taxes at issue, and that she willfully failed to do so.

3. Petitioner filed a petition on July 11, 1983 wherein her grounds claimed for relief were listed as follows:

"(1) The taxpayer **is** not a "person" required to collect and pay over withholding taxes for ISRAMKAR LTD. (the corporation) as defined in Section 685(N) (sic) of the Tax Law.

(2) The taxpayer was neither an officer, stockholder or director of the corporation and she was never an employee of the corporation.

(3) The taxpayer had no authorization to collect and pay over withholding taxes for ISRAMKAR LTD.

(4) The assessment for all periods **is** barred by the Statute of Limitations."

4. Withholding Tax Section Accounts Receivable System computer printouts show that Isramkar Ltd. filed returns for the periods at issue on the following dates:

<u>Period</u>	<u>Date Return Filed</u>
July 1, 1977 through December 31, 1977	June 12, 1979
January 1, 1978 through December 31, 1978	May 28, 1980
January 1, 1979 through December 31, 1979	April 6, 1981

5. Petitioner was listed as one of the incorporators of Isramkar Ltd. and was designated as President upon incorporation. She was never a stockholder of the corporation.

6. Isramkar Ltd. commenced operations prior to the years at issue. At that time petitioner immediately resigned and her husband, Murray Wilson, was elected President. During the years at issue petitioner was never an officer of Isramkar Ltd. Furthermore, she had **no** involvement **in** the corporate affairs of Isramkar Ltd. during such years.

7. The Corporation Franchise Tax Report filed by Isramkar Ltd. for the fiscal year ended October 31, 1977 was signed by Murray Wilson **as** President. Said report erroneously listed petitioner as President in Schedule F.

CONCLUSIONS OF LAW

A. That the penalty for failure to pay withholding taxes under section 685(g) of the Tax Law is wholly distinct from any limitation on assessment under section 683. "It follows then that the penalty imposed against petitioner as a corporate officer is entirely distinct from an...assessment against the corporation. As a separate statutory liability, it need not be assessed within any particular period after the corporate assessment is made (citations omitted)."

Wolfstitch v. New York State Tax Commission, 106 A.D.2d 745. Accordingly, the Notice of Deficiency issued April 25, 1983 was timely.

B. That section 685(g) of the Tax Law provides that:

"Any person required to collect, truthfully account for, and pay over the tax imposed by this article who willfully fails to collect such tax or truthfully account for and pay over such tax or willfully attempts in any manner to evade or defeat the tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty equal to the total amount of the tax evaded, or not collected, or not accounted for and paid over."

For New York City purposes, section T46-185.0(g) of the Administrative Code of the City of New York contains a similar provision.

C. That sections 685(n) of the Tax Law and T46-185.0(n) of the Administrative Code of the City of New York provide that, for purposes of subdivision (g), the term person:

"[I]ncludes an individual, corporation or partnership or an officer or employee of any corporation (including a dissolved corporation), or a member or employee of any partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs,"


D. That petitioner, Sondra Wilson, was not a person required to collect, truthfully account for and pay over the withholding taxes at issue since she was not an officer of Isramkar Ltd. during the periods at issue and she was not involved in the corporate affairs of Isramkar Ltd. during such periods. Accordingly, the penalties asserted against her pursuant to sections 685(g) of the Tax Law and T46-185.0(g) of the Administrative Code of the City of New York are hereby cancelled.

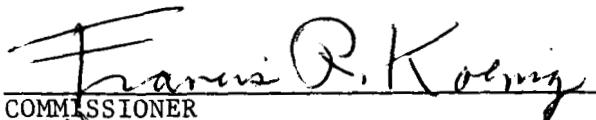
E. That the petition of Sondra Wilson is granted and the Notice of Deficiency issued against her on April 25, 1983 is cancelled.


DATED: Albany, New York

STATE TAX COMMISSION

MAY 23 1986


PRESIDENT


COMMISSIONER


COMMISSIONER