

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition

of

NORMAN P. LANDAS

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 Periods January 1, 1981  
through December 31, 1981 and June 1, 1982  
through June 30, 1982.

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Petitioner, Norman P. Landas, 67-31 161st Street, Flushing, New York  
11365, 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 periods January 1, 1981 through December 31,  
1981 and June 1, 1982 through June 30, 1982 (File No. 50092).

A hearing was held before James Hoefer, Hearing Officer, at the offices of  
the State Tax Commission, Two World Trade Center, New York, New York, on  
September 11, 1985 at 1:15 P.M. Petitioner appeared by Moldover, Hertz,  
Presnick & Gidaly (Gerald M. Hertz, Esq., of counsel). The Audit Division  
appeared by John P. Dugan, Esq. (Irwin Levy, Esq., of counsel).

#### ISSUE

Whether petitioner was a person who willfully failed to collect, truthfully  
account for and pay over the New York State and New York City withholding taxes  
of Commercial Business Systems, Inc. and therefore subject to penalty equal in  
amount to the unpaid withholding taxes due and owing from said corporation.

FINDINGS OF FACT

1. On October 24, 1983, the Audit Division issued a Statement of Deficiency to petitioner as "Norman P. Landis" (sic), asserting that he was a person required to collect, truthfully account for and pay over the New York State and City withholding taxes of Commercial Business Systems, Inc. (hereinafter "Commercial") for the periods January 1, 1981 through December 31, 1981 and June 1, 1982 through June 30, 1982. The aforementioned Statement further alleged that petitioner willfully failed to collect, truthfully account for and pay over said withholding taxes and that he was therefore subject to a penalty equal in amount to the unpaid withholding taxes of \$1,227.66. Accordingly, on October 24, 1983, the Audit Division issued a Notice of Deficiency to petitioner for the years 1981 and 1982 asserting a deficiency of \$1,227.66.

2. On September 1, 1981, petitioner, James A. Bronstein and Walter Boxer entered into an agreement with Commercial wherein all three individuals were elected directors and officers of the corporation. Mr. Bronstein was elected President of Commercial, while petitioner held the title of Vice-president and Mr. Boxer the title of Secretary-Treasurer. Both Bronstein and Boxer were forty percent (40%) shareholders in Commercial, while petitioner owned the remaining twenty percent (20%) of its outstanding stock. Prior to September 1, 1981, petitioner was neither an officer nor employee of Commercial.

3. Prior to his becoming Vice-president of Commercial, petitioner was employed by the 3M Corporation as a service technician primarily involved in the servicing and repairing of photocopy equipment. Petitioner performed essentially the same services for Commercial and spent the major portion of his day in the field repairing and servicing the equipment sold by Commercial.

Mr. Landas would visit Commercial's offices on the average of only one day per week.

4. All checks issued by Commercial had to be co-signed by either Mr. Boxer and Mr. Bronstein or Mr. Boxer and petitioner. Since petitioner did not visit Commercial's offices on a regular and frequent basis, he would pre-sign as many as thirty (30) blank checks. Petitioner was not involved in the determination of which creditors were to be paid, nor did he ever sign any tax returns on behalf of the corporation. Mr. Landas' responsibilities did not include the collection and/or payment of withholding taxes.

5. Petitioner was unaware that New York State and City withholding taxes were not being remitted to the Audit Division. Mr. Landas first learned of the details of Commercial's indebtedness when he saw the bankruptcy petition filed by Commercial sometime in October of 1982. Petitioner devoted all his time and effort to Commercial's business and the wage income received from Commercial was his sole source of income.

#### CONCLUSIONS OF LAW

A. That petitioner was not a person required to collect, truthfully account for and pay over the New York State and City withholding taxes of Commercial. Mr. Landas was the service and repair technician for Commercial and he spent almost all his time in the field repairing and servicing equipment. Although petitioner had authority to and, in fact, did sign corporate checks, it must be noted that he signed only blank checks. Petitioner did not determine which creditors were to be paid, did not sign tax returns and was not responsible for the collection and/or payment of withholding taxes.

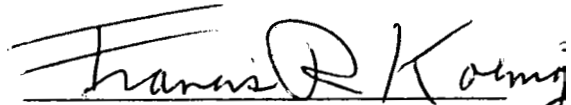
B. That the petition of Norman P. Landas is granted and the Notice of Deficiency dated October 24, 1983 is hereby cancelled.

DATED: Albany, New York

STATE TAX COMMISSION

**MAR 27 1986**

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER