

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

INTERKNITTING LTD.

DECISION

for Redetermination of a Deficiency or for
Refund of New York State Personal Income Tax
under Article 22 of the Tax Law for the Period :
January 16, 1983 through June 30, 1983.

Petitioner, Interknitting Ltd., 104 North Grand Street, Cobleskill, New York 12043, 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 for the period January 16, 1983 through June 30, 1983 (File No. 61594).

A hearing was held before James Hoefer, Hearing Officer, at the offices of the State Tax Commission, Building #9, Room 107, W.A. Harriman Campus, Albany, New York 12227, on April 8, 1987 at 1:15 P.M. Petitioner appeared by Larry J. Sheeler, C.P.A. The Audit Division appeared by John P. Dugan, Esq. (Thomas Sacca, Esq., of counsel).

ISSUE

Whether petitioner's failure to timely file employer withholding tax returns and failure to timely pay over tax withheld from employee wages was due to reasonable cause and not willful neglect.

FINDINGS OF FACT

1. Petitioner herein, Interknitting Ltd. (hereafter "Interknitting"), is a textile knitting company which began business in Cobleskill, New York in 1976. During the period at issue, petitioner had approximately 200 employees and was required to file New York State employer withholding tax returns and pay over tax withheld from employee wages on a semi-monthly basis.

2. Petitioner did not timely file the 11 semi-monthly employer withholding tax returns due for the period January 16, 1983 through June 30, 1983. **All** 11 returns were filed simultaneously and payment of the tax due shown on said returns was made when the returns were filed.

3. **As** the result of Interknitting's failure to timely file its withholding tax returns and failure to timely pay over the tax withheld from employee wages, the Audit Division, for the period at issue, imposed penalties against petitioner totalling \$5,419.09. Penalties were assessed pursuant to Tax Law § 685(a)(1) for failure to timely file returns and Tax Law § 685(a)(2) for failure to timely pay over the tax.

4. On January 27, 1984, petitioner paid the \$5,419.09 in penalty charges and on January 23, 1985, it made a request for abatement of said penalties and for refund. On March 4, 1985, petitioner's request for abatement of penalties and for refund was denied and, it thereafter timely filed a petition for refund.

5. Petitioner believes that its failure to timely file withholding tax returns and failure to timely pay over tax withheld from employee wages **was** due to reasonable cause and was not due to willful neglect. It is Interknitting's position that the following three factors all contributed to the aforementioned failures and establishes the existence of reasonable cause:

(a) In mid-1982, petitioner began a major expansion of its manufacturing facilities which cost approximately \$4,000,000.00 and involved the acquisition of land, construction of a 30,000 square foot building and purchase and installation of **30** new textile knitting machines. The expansion program, completed in late 1983, enabled petitioner to double its manufacturing capacity. Petitioner's

president, Bruno Hofmann, and several other key employees were greatly burdened by the added responsibilities relating to said expansion project.

(b) Beginning in July of 1982 through August of 1983 a total of six office personnel terminated their employment with petitioner. The turnover in office personnel resulted in a significant disruption in many routine office functions. **Also**, as the result of said turnover the employee responsible for paying over New York State tax withheld from employee wages was required to assume many other functions and responsibilities and forced to temporarily abandon some of his clerical bookkeeping functions.

(c) In December of 1982 petitioner received notification that American Rehers Zwirne, Ltd. was going to cease all business operations. Said company was the only major supplier of an important special or novelty yarn which was utilized by petitioner in its manufacturing process. In order to protect its source of novelty yarn, petitioner immediately began negotiations to acquire American Rehers Zwirne, Ltd. and the negotiations ultimately led to a purchase of said company in April of 1983. Once again, petitioner's president and several of its key employees were greatly burdened by the time expended in acquiring the aforementioned company.

6. During the period at issue, petitioner utilized the services of an automated data processing firm for the purpose of computing its payroll. Said firm computed the payroll, printed payroll checks and provided petitioner with a weekly report of the amount of New York State tax that had been withheld from employee wages.

7. Petitioner's failure to timely file withholding tax returns and to timely pay over tax withheld from employee wages was not caused by cash flow problems. In the words of petitioner's accountant the employee responsible for

filing the returns and paying the tax had been spread too thin and that "The things that had to be done, the payroll, of course, had to be paid. They had to pay their suppliers because their suppliers wouldn't keep delivering yarn. But, I guess once he [the employee] stopped the routine of making his New York State payments, I don't know if he thought about it from time to time and just never got back to it."

8. The record herein discloses that petitioner was delinquent in filing withholding tax returns and in payment of tax withheld from employee wages for periods both before and after those at issue in this proceeding. The following table details those periods that petitioner was delinquent from March 16, 1982 through September 15, 1984 and the number of delinquent withholding tax returns which were filed during said periods:

<u>Period</u>	<u>Number of Returns</u>
3/16/82 - 7/15/82	8
8/16/82 - 8/31/82	1
11/1/82 - 11/15/82	1
1/16/83 - 7/15/83	14
8/1/83 - 12/31/83	10
1/1/84 - 1/15/84	2
4/1/84 - 4/15/84	2
7/23/84 - 7/31/84	1
8/8/84 - 8/22/84	2
9/1/84 - 9/15/84	2

9. On October 18, 1982, petitioner made a payment of \$613.14 for interest and penalty due on the late filed withholding tax return for the period March 16, 1982 through March 31, 1982. On November 4, 1982, petitioner made another

1 Effective January 1, 1984, petitioner was required to file withholding tax returns and pay over tax withheld from employee wages on a quarter-monthly basis.

payment of \$2,675.69 for interest and penalty due on the late filed withholding tax returns for the period April 1, 1982 through July 15, 1982.

CONCLUSIONS OF LAW

A. That Tax Law § 685(a)(1) provides for the imposition of a penalty of 5% per month for failure to file a return on or before the prescribed date; while Tax Law § 685(a)(2) provides for the imposition of a penalty of one-half of one percent per month for failure to pay the amount shown as tax on a return on or before the prescribed date. Both penalties are to be imposed unless it is shown that the failure to file or failure to pay was due to reasonable cause and not willful neglect;

B. That although extenuating circumstances contributed to petitioner's failure to timely file withholding tax returns and failure to timely pay over taxes withheld from employee wages, it can not be found on this record that said failures were due to reasonable cause and not willful neglect. Although petitioner seeks wavier of penalties only for the five and one-half month period from January 16, 1983 through June 30, 1983, it must be noted that there existed a consistent pattern of delinquency which spanned a period of two and one-half years and that the delinquency occurred both prior to and subsequent to the period at issue herein. Furthermore, petitioner made payments on October 18, 1982 and November 4, 1982 of substantial penalty assessments for earlier periods and was therefore put on notice that failure to timely file and failure to timely pay would result in the assessment of penalties. Moreover, petitioner utilized the services of an automated data processing company to compute its payroll and it received from said company a weekly report of New York State taxes withheld from employee wages. With a weekly summary of taxes withheld it is a simple task to complete and file semi-monthly withholding tax


returns. Finally, Interknitting, a company experiencing no day-to-day cash flow problems, was making timely payment to those creditors which had to be paid to insure smooth daily operations and since late payment of New York State withholding taxes would not cause a disruption in daily production petitioner, in essence, chose to ignore its responsibility to timely file withholding tax returns and to timely pay over the taxes withheld from employee wages.

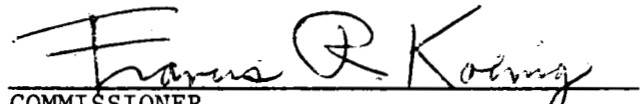
C. That the petition of Interknitting Ltd. for refund is denied in its entirety.

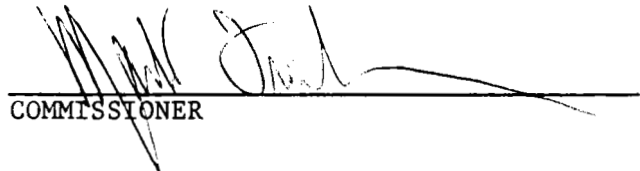
DATED: Albany, New York

STATE TAX COMMISSION

AUG 14 1987


PRESIDENT


COMMISSIONER


COMMISSIONER