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BUREAU OF LAW

MEMORANDUM

Income Tax Determin.
A-2
Lenahan, Jm. P.

TO: State Tax Commission

FROM: Solomon Sies, Hearing Officer

SUBJECT: Application of William P. Lenahan
 for Refund of Withholding Taxes
 under Article 16 of the Tax Law
 for the Year 1960

The file was submitted to the Law Bureau for formal hearing.

The issue involves timeliness in the issuance of an assessment against a corporate officer for failure to pay over withholding taxes.

William P. Lenahan, the taxpayer, was vice president of Rausse Air Conditioning & Heating, Inc. An involuntary petition in bankruptcy was filed against the aforementioned corporation in the U. S. District Court for the Western District of New York on June 27, 1961 and the corporation was adjudicated a bankrupt on August 8, 1961. Withholding tax returns for the four quarters of 1960 were filed indicating tax withheld in the amount of \$1,473.93, of which \$190.71 was paid leaving an unpaid balance of \$1,283.22. The returns were signed by Arthur Rausse, president. On January 31, 1967, a notice and demand (Account No. R0800966) for payment of unpaid balance of withholding taxes of \$1,283.22, penalty of \$73.70 and interest of \$564.19 for a total of \$1,921.11 was issued against the taxpayer, William P. Lenahan, for the quarters ending March 31, June 30, September 30 and December 31, 1960 on the ground that "assessment is issued under Section 376, para. 1 of the Tax Law"

On October 3, 1967, the taxpayer paid the assessment and filed an application for revision thereof and a claim for refund of \$1,991.67, the amount paid, contending, among other things, that since the assessment was issued more than three years after the filing of the corporation's returns, it was barred as untimely.

Section 373(1) of Article 16 of the Tax Law requires assessments to be made "within three years after the return was made." Since the assessment was issued more than three years after the returns were made and filed, I am of the opinion that the taxpayer's application should be granted and the assessment vacated and annulled.

This conforms with the determination of the Tax Commission in the Matter of Jules Traversa, a copy of which is attached hereto.

For the reasons stated above, I recommend that the determination of the Tax Commission in the above matter be substantially in the form submitted herewith.

SOLOMON SIES

Hearing Officer

SS:rlp

Enc.

February 25, 1969

Sent to Commission 3/4/69

BUREAU OF LAW
MEMORANDUM

TO: State Tax Commission

FROM: Alfred Rubinstein, Hearing Officer

SUBJECT: Application of Jules Trevers Under
Article 16 for 1960

Petition of Jules Trevers Under
Article 22 for 1961


The file was submitted to the Law Bureau for formal hearing. The issue involved timeliness of assessments imposed against a corporate officer for failure to pay over withholding taxes.

Jules Trevers, the taxpayer, was vice president of Rand Forwarding Corp. whose assets were seized in March 1961, and sold to satisfy delinquent Federal taxes. Withholding tax returns for 1960 and for the first quarter of 1961 were filed without remittance, and signed by Jules Trevers, as vice president of Rand. On July 12, 1965 a notice and demand (Account No. AW999218A) for payment of withholding taxes, penalty and interest in the total sum of \$3,539.46 was issued against the taxpayer for 1960 on the ground that, "Assessment is issued under section 376, par. 1 of the Tax Law * * *." On the same day, July 12, 1965, a notice and demand (Account No. AW999218) for payment of income tax in the sum of \$389.20 was issued against the taxpayer for 1961 on the ground that, "This notice and demand is issued under sections 692 and 694 of the Tax Law" and to which was annexed a notice of jeopardy assessment for penalty under sections 685(g) and 685(1) of the Tax Law for wilful failure to pay over taxes withheld for the quarter ended March 31, 1961.

Taxpayer filed an application for revision and a demand for hearing for 1960 and a petition for redetermination for 1961, contending, among other things, that the assessments, both of which were issued more than three years after the filing of the corporation's returns, were barred as untimely.

Section 373(1) of Article 16 of the Tax Law requires assessments to be made, "* * * within three years after the return was made." Subsection (a) of Section 603 of Article 22 of the Tax Law requires assessments to be made, "* * * within

three years after the return was filed * * *." As both assessments were issued more than three years after the returns were made and filed the taxpayer's application and petition should be granted and the assessments vacated and annulled. The determination and decision of the Tax Commission should be substantially in the forms submitted herewith.



Hearing Officer

AR:ac
Enc.

January 21, 1969

STATE OF NEW YORK

STATE TAX COMMISSION

IN THE MATTER OF THE APPLICATION :
OF :
JULES TREVERS :
FOR REVISION OR REFUND OF PERSONAL INCOME :
TAXES UNDER ARTICLE 16 OF THE TAX LAW FOR :
THE YEAR 1960 :

Jules Trevers having filed an application for revision or refund of personal income taxes under Article 16 of the Tax Law for the year 1960 and the matter having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That during 1960 the taxpayer, Jules Trevers, was vice-president of Rand Forwarding Corp., a New York employer; that during 1960 Rand Forwarding Corp. deducted and withheld from the salaries paid to its employees New York income taxes in the sum of \$2,646.80; that Rand Forwarding Corp. filed quarterly returns, as required by the Tax Law, reporting to the Income Tax Bureau the taxes withheld from its employees; that such withheld tax moneys were not paid over to the State of New York, nor accounted for; that the returns filed by Rand Forwarding Corp. were signed by the taxpayer, Jules Trevers, as vice-president of the corporation.

(2) That in March of 1961 all of the assets of Rand Forwarding Corp. were seized and sold and the proceeds of such seizure and sale were used in satisfaction of unpaid Federal tax liens; that thereafter and on July 12, 1965, the Income Tax Bureau issued a notice and demand, bearing account number NY 999218A, assessing the taxpayer, individually, for the taxes withheld by Rand Forwarding Corp. in 1960, together with penalty.

and interest, making a total sum assessed of \$3,539.46; that such assessment purported to impose a liability for the corporation's taxes on the taxpayer, as a withholding agent, under section 376(1) of the Tax Law; that such assessment was made more than three years after filing of the returns reporting the taxes withheld by Rand Forwarding Corp., and more than three years after such returns were required, by law, to be filed.

(3) That the taxpayer filed an application for revision, demanding a hearing, requesting cancellation of the assessment on the ground that he was not personally liable for the taxes, and on the further ground that the assessment was barred under the provisions of section 373(1) of the Tax Law, not having been made within three years of the filing of the returns.

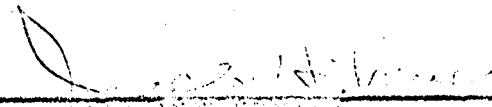
Based on the foregoing findings and all of the evidence presented herein, the State Tax Commission hereby

DETERMINES:

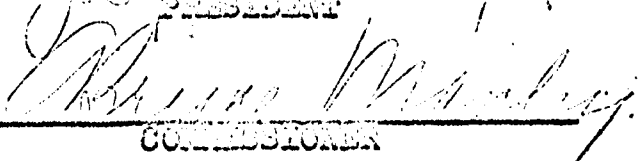
That the notice and demand issued July 12, 1965 imposing an assessment against the taxpayer, Jules Trovers, in the sum of \$3,539.46 for failure to pay over or account for taxes withheld was not imposed within the time limited by law; that the said determination assessing the taxpayer was untimely and barred by the provisions of subdivision (1) of section 373 of the Tax Law; that the same was not lawfully issued and is hereby vacated and annulled; and that the taxpayer's application for revision or refund with respect thereto is hereby granted.

DATED: Albany, New York this 28th day of January, 1969.

STATE TAX COMMISSION



PRESIDENT



COMMISSIONER

COMMISSIONER

STATE OF NEW YORK

STATE TAX COMMISSION

.....
IN THE MATTER OF THE APPLICATION

OF

WILLIAM F. LENAHAN

**FOR REVISION OR REFUND OF PERSONAL
INCOME TAXES UNDER ARTICLE 16 OF
THE TAX LAW FOR THE YEAR 1960**
.....

William F. Lenahan, having filed an application for revision or refund of personal income taxes under Article 16 of the Tax Law for the year 1960 and the matter having been examined and considered,

The State Tax Commission hereby finds:

(1) That during the year 1960, the taxpayer, William F. Lenahan, was vice president of Ranco Air Conditioning and Heating, Inc., a domestic corporation organized under the laws of the State of New York and maintaining its principal place of business at 493 Court Street, Rochester, New York; that during 1960, Ranco Air Conditioning and Heating, Inc. deducted and withheld from the salaries paid to its employees New York income taxes in the amount of \$1,473.93; that there was paid on account thereof the amount of \$150.72 leaving an unpaid balance due in the amount of \$1,323.21; that Ranco Air Conditioning and Heating, Inc. filed quarterly returns for the periods ending March 31, June 30, September 30 and December 31, 1960, as required by the Tax Law, reporting to the Department of Taxation and Finance taxes withheld from its employees; that such withheld tax monies, except as indicated above, were not paid over to the State of New York, nor accounted for; that the returns filed by Ranco Air Conditioning and Heating, Inc. were signed by Arthur Ranco, president of the corporation.

(2) That on June 27, 1961, an involuntary petition in bankruptcy was filed against Rouse Air Conditioning and Heating, Inc. in the U. S. District Court for the Western District of New York; that Rouse Air Conditioning and Heating Inc. was adjudicated a bankrupt on August 8, 1961; that thereafter and on January 31, 1967, the Department of Taxation and Finance issued a notice and demand bearing account number R0800066, assessing the taxpayer, William F. Lushan, individually, for the balance of taxes due which were withheld by said Rouse Air Conditioning and Heating, Inc. in 1960, in the amount of \$1,863.22 together with penalty of \$73.70 and interest of \$554.19 making a total sum assessed of \$1,991.11; that such assessment purported to impose a liability for the corporation's taxes on the taxpayer as a withholding agent, under Section 376(1) of the Tax Law; that such assessment was made more than three years after the filing of the returns reporting the taxes withheld by Rouse Air Conditioning and Heating, Inc. and more than three years after such returns were required, by law, to be filed.

(3) That on or about October 3, 1967 the taxpayer, William F. Lushan, paid the amount of \$1,991.67, under protest in full satisfaction of the assessment and more fully set forth in finding (2) above.

(4) That on October 3, 1967, the taxpayer filed a claim for refund of the \$1,991.67 paid and at same time filed an application for revision requesting cancellation of the assessment on the ground that he was not personally liable for the taxes and on the further ground that the assessment was barred under the provisions of Section 373(1) of the Tax Law, not having been made within three years of the filing of the returns.

Based upon the foregoing findings and all of the evidence presented herein, the State Tax Commission hereby

DETERMINE:

(A) That the notice and demand issued January 31, 1967, imposing an assessment against the taxpayer, William F. Lonskan, in the amount of \$1,921.21 for failure to pay over or account for taxes withheld was not imposed within the time limited by law; that the said determination assessing the taxpayer was untimely and barred by the provisions of subdivision (1) of Section 373 of the Tax Law; that the same was not lawfully issued and is hereby vacated and annulled; that the sum of \$1,991.67 paid by the taxpayer pursuant to said assessment be refunded to him together with any lawful interest that may be due thereon.

Dated: Albany, New York this 12th day of March, 1969.

STATE TAX COMMISSION

/s/

Joseph H. Murphy

~~COMMISSIONER~~

/s/

A. Bruce Manley

~~COMMISSIONER~~

/s/

Milton Keerner

~~COMMISSIONER~~