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MEMORANDUM

Income Tax Determination A-Z
Trevers, Jules

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, 1963 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, 1963, 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 683(g) and 683(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 683 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.

/s/

ALFRED RUBINSTEIN
Hearing Officer

AR:ac
Enc.

January 21, 1969

Sent to Commission 1/22/69

STATE OF NEW YORK

STATE TAX COMMISSION

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IN THE MATTER OF THE PETITION :

OF :

JULIUS TREVORS :

FOR REDETERMINATION OF A DEFICIENCY OR FOR :
REFUND OF PERSONAL INCOME TAXES UNDER :
ARTICLE 22 OF THE TAX LAW FOR THE YEAR 1961 :

.....

Julius Trevors having filed a petition for redetermination of a deficiency or for refund of personal income taxes under Article 22 of the Tax Law for the year 1961 and the matter having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That during 1961 the taxpayer, Julius Trevors, was vice-president of Rand Forwarding Corp., a New York employer; that during 1961 Rand Forwarding Corp. deducted and withheld from the salaries paid to its employees New York income taxes in the sum of \$389.80; that Rand Forwarding Corp. filed a quarterly return, 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 return filed by Rand Forwarding Corp. was signed by the taxpayer, Julius Trevors, 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, 1963, the Income Tax Bureau issued a notice and demand and jeopardy assessment bearing account number AN 9992181, assessing the taxpayer, individually, for the taxes withheld by Rand Forwarding Corp. in 1961, in the

sum of \$389.80; that such assessment purported to impose a penalty on the taxpayer, as a person required to collect, account for and pay over taxes, under sections 685(g) and 685(1) of the Tax Law; that such assessment was made more than three years after filing of the return reporting the taxes withheld by Lund Forwarding Corp., and more than three years after such return was required, by law, to be filed.

(3) That the taxpayer filed a petition for redetermination of a deficiency or for refund, 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 685(a) of the Tax Law, not having been made within three years of the filing of the return.

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

DECIDES:

That the notice and demand and jeopardy assessment issued July 12, 1963 imposing a penalty against the taxpayer, Jules Trovare, in the sum of \$389.80 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 subsection (a) of section 685 of the Tax Law; that the same was not lawfully issued and is hereby vacated and annulled; and that the taxpayer's petition for redetermination or for refund with respect thereto is hereby granted.

DATED: Albany, New York this 24th day of January , 1969.

STATE TAX COMMISSION

/s/

JOSEPH H. MURPHY

PRESIDENT

/s/

A. BRUCE MANLEY

VICE PRESIDENT

SECRETARY

**STATE OF NEW YORK
STATE TAX COMMISSION**

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

Julius Trevars 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, Julius Trevars, 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, Julius Trevars, 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, 1963, the Income Tax Bureau issued a notice and demand, bearing account number AN 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 Hand 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, 1963 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 24th day of January, 1969.

STATE TAX COMMISSION

/s/

JOSEPH H. MURPHY
PRESIDENT

/s/

A. BRUCE MANLEY
COMMISSIONER

COMMISSIONER