

STATE OF NEW YORK  
STATE TAX COMMISSION

*Berger, Fred*  
*Personal Income*  
*(1971)*

In the Matter of the Petition

of

FRED BERGER

For a Redetermination of a Deficiency or  
a Refund of Personal Income  
Taxes under Article(s) 22 of the  
Tax Law for the (Year(s) 1967 and 1968.

AFFIDAVIT OF MAILING  
OF NOTICE OF DECISION  
BY (CERTIFIED) MAIL

State of New York  
County of Albany

Linda Wilson, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 12th day of August, 1971, she served the within Notice of Decision (or Determination) by (certified) mail upon FRED BERGER

(representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Fred Berger  
138 Haven Avenue  
New York, New York 10032

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative of) petitioner herein and that the address set forth on said wrapper is the last known address of the (representative of the) petitioner.

Sworn to before me this

12th day of August, 1971.

*Matthew J. Jones*

*Linda Wilson*

STATE OF NEW YORK

STATE TAX COMMISSION

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: DECISION  
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Petitioner, Fred Berger, has filed a petition for redetermination of deficiency or for refund of personal income taxes under Article 22 of the Tax Law for the years 1967 and 1968. (File #13-1921744).

A formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York, on November 17, 1970, at 10:45 A.M. Petitioner appeared pro se. The Income Tax Bureau appeared by Edward H. Best, Esq., (Solomon Sies, Esq., of Counsel).

FINDINGS OF FACT

1. Trio Coat Co., Inc. was a corporation doing business in New York State until on or about February 25, 1968, when it filed an assignment for the benefit of creditors. It filed Employer's Semi-Annual Return of New York State Personal Income Tax Withheld for the second semi-annual period of 1967 and for the period from January 1, 1968, to February 28, 1968. A check in the sum of \$185.80 was enclosed with the return for the second semi-annual period of 1967. They were mailed by the corporation to the Income

Tax Bureau on January 31, 1968. The corporate bank account was closed by petitioner, Fred Berger, prior to the check's presentation for payment. The check was returned unpaid. No payment of the tax withheld was made with the return for the period from January 1, 1968, to February 28, 1968. The corporation is presently insolvent.

2. On January 27, 1969, the Income Tax Bureau issued a Statement of Deficiency imposing a penalty against petitioner, Fred Berger, equal to the amount of unpaid New York State withholding tax due from Trio Coat Co., Inc. for the period from July 1, 1967, through February 28, 1968, upon the grounds that he was a person required to collect, truthfully account for and pay over said tax and that he willfully failed to do so and accordingly issued a Notice of Deficiency in the sum of \$245.80.

3. Petitioner, Fred Berger, was president of Trio Coat Co., Inc. during the period from July 1, 1967, through February 28, 1968. His signature was required on all corporate checks. He signed the Employer's Semi-annual Return of New York State Personal Income Tax Withheld for the second half of 1967.

4. During the month of February, 1968, petitioner, Fred Berger, caused Trio Coat Co., Inc. to turn over to the attorney for its creditors customers checks payable to it in the sum of \$2,669.65. He also caused the corporation to turn over the balance of its bank account to said attorney. The attorney for the creditors advised petitioner that he would pay the corporation's past due withholding taxes out of the proceeds it turned over to him.

5. The attorney for the creditors of Trio Coat Co., Inc. has not paid the New York State Withholding Taxes due from said corporation for the period from July 1, 1967, to February 28, 1968.

CONCLUSIONS OF LAW

A. That Petitioner, Fred Berger, as an officer of Trio Coat Co., Inc. was a person required to collect, truthfully account for and pay over New York State withholding taxes due from said corporation for the period from July 1, 1967 through February 28, 1968 in accordance with the meaning and intent of Sections 674 and 685(1) of the Tax Law.

B. That since petitioner, Fred Berger, willfully failed to, or caused Trio Coat Co., Inc. to willfully fail to collect, truthfully account for and pay over New York State withholding taxes due from said corporation for the period from July 1, 1967 through February 28, 1968, therefore a penalty equal to the total amount of the unpaid withholding taxes was properly assessed against him in accordance with the meaning and intent of Section 685(g) of the Tax Law.

C. That the petition of Fred Berger is denied and the Notice of Deficiency issued January 27, 1969 is sustained.

DATED: Albany, New York

*August 12, 1971.*

STATE TAX COMMISSION

*Norman Gallman*

COMMISSIONER

*Bruce Hawley*

COMMISSIONER

*Milton Koenig*

COMMISSIONER