

STATE OF NEW YORK
STATE TAX COMMISSION

Moritz, Henry
Personal Income
Art. 22 (1971)

In the Matter of the Petition

of

HENRY MORITZ

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) 1963 and 1964;

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 25th day of August, 1971, she served the within Notice of Decision (or Determination) by (certified) mail upon HENRY MORITZ

(representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Henry Moritz
3286 Ocean Harbor Drive
Oceanside, L.I., New York

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

25th day of August, 1971.

Paula T. ...

Linda Wilson

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

HENRY MORITZ

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) 1963 and 1964.

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 25th day of August, 1971, she served the within Notice of Decision (or Determination) by (certified) mail upon ABRAHAM M.

SILVERMAN (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Abraham M. Silverman
50 Park Avenue
New York, New York

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

25th day of August, 1971.

Rae Zimmerman

Linda Wilson

STATE TAX COMMISSION

In the Matter of the Petition :

of :

HENRY MORITZ :

DECISION

for Redetermination of Deficiency or for
Refund of Personal Income Taxes under :
Article 22 of the Tax Law for the years
1963 and 1964. :

Petitioner, Henry Moritz, 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 1963 and 1964, (File #13-1936715). 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 September 23, 1970 at 1:15 P.M. Petitioner appeared by Abraham M. Silverman, Esq., The Income Tax Bureau appeared by Edward H. Best, Esq., (Albert J. Rossi, Esq. of counsel).

FINDINGS OF FACT

1. Nan Dee, Inc. was incorporated in the year 1962. During the period from July 1, 1963 to February 29, 1964, it was engaged in manufacturing of maternity dresses. Subsequent to February 29, 1964 it filed an assignment for the benefit of creditors. It filed Employer's Quarterly Return of New York State Personal Income Tax Withheld for the third and fourth quarters of 1963 and for the period from January 1, 1964 to February 29, 1964. No payment of the tax withheld was made with these returns. The corporation is presently insolvent.

2. Petitioner, Henry Moritz, invested \$35,000.00 in Nan Dee, Inc. Between July 1, 1963 and February 29, 1964 he was a stockholder, a treasurer and a director of the corporation. His signature was required on all corporate checks. He signed the Employer's Quarterly

Return of New York State Personal Income Tax Withheld for the fourth quarter of 1963.

3. In February, 1964, Nan Dee, Inc., was in serious financial difficulty. Early in March, 1964, petitioner, Henry Moritz, entered an agreement in writing with Royal Equities, Incorporated, wherein he transferred his stock in Nan Dee, Inc., to Royal Equities, Incorporated and resigned as an officer and director of the corporation in consideration for Royal Equities, Incorporated indemnifying him against having to pay any prior Federal or New York State withholding taxes due from Nan Dee, Inc.

4. On April 13, 1967, the Income Tax Bureau issued a statement of deficiency imposing a penalty against petitioner, Henry Moritz, equal to the amount of unpaid New York State withholding taxes due from Nan Dee, Inc., for the period from July 1, 1963 through February 29, 1964 upon the grounds that he was a person required to collect, account for or pay over said tax and that he willfully failed to do so and accordingly issued a Notice of Deficiency in the sum of \$2,662.50.

5. That Royal Equities, Incorporated has not paid the New York State withholding taxes due from Nan Dee, Inc., for the period from July 1, 1963, through February 29, 1964.

CONCLUSIONS OF LAW

A. That petitioner, Henry Moritz, as an officer of Nan Dee, Inc., was a person required to collect, truthfully account for and pay over the New York State withholding taxes due from said corporation for the period from July 1, 1963 through February 29, 1964, within the meaning and intent of Sections 674 and 685 (1) of the Tax Law.

B. That since petitioner, Henry Moritz, willfully failed to, or caused Nan Dee, Inc. to willfully fail to collect, and truthfully account for and pay over the New York State withholding taxes due from


the corporation for the period from July 1, 1963 through February 29, 1964, therefore a penalty equal to the total amount of the unpaid withholding taxes was properly assessed against him in accordance with meaning and intent of Section 685 (g) of the Tax Law.

C. That the petition of Henry Moritz is denied and the Notice of Deficiency issued April 13, 1967 is sustained.

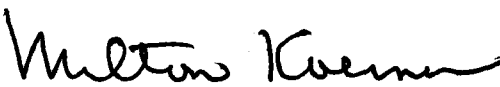
DATED: Albany, New York

August 25, 1971.

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER