

STATE OF NEW YORK
STATE TAX COMMISSION

Pinchuk Isaac
Pinchuk Isaac
1971

In the Matter of the Petition

of

ISAAC H. PINCHUK

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) 1964

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

State of New York
County of Albany

Martha Funaro , 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 17th day of September , 19 71, she served the within
Notice of Decision (or Determination) by (certified) mail upon Isaac H.
Pinchuk

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Isaac H. Pinchuk
852 East 10th Street
Brooklyn, 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

17th day of September , 1971.

Linda Wilson

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
ISAAC H. PINCHUK	:	DECISION
for a Redetermination of a Deficiency	:	
or for Refund of Personal Income Taxes	:	
under Article 22 of the Tax Law for	:	
the Year 1964.	:	

Isaac H. Pinchuk filed a petition for the redetermination of a deficiency in personal income taxes under Article 22 of the Tax Law for the year 1964. In lieu of a hearing, petitioner requested that the petition be decided by the State Tax Commission on the file of the Income Tax Bureau with respect to said deficiency. Said file has been duly examined and considered.

ISSUE

The issue in this case is whether petitioner is liable under section 685(g) of the Tax Law as a responsible officer of a corporation who willfully fails to pay over withholding taxes where petitioner alleges that (a) the taxes were paid by the corporation, (b) he was not a responsible officer and (c) his failure to pay over was because he believed that the corporation had paid the tax.

FINDINGS OF FACT

1. A deficiency notice was issued on April 1, 1968, for \$1,349.35, with no interest, for withholding taxes for the period October 1, 1964 through December 31, 1964, due from the New Shelton Corporation located at 49th Street and Lexington Avenue, New York City.

2. The amount of tax due is taken from an "Employer's monthly return" (IT-2101-M) dated January 29, 1968, covering the three months of October, November and December 1968 and signed by the president

of New Shelton. The amount is also shown on an annual "reconciliation" (IT-2103 (BNS)) filed thereafter and signed by the comptroller of New Shelton.

3. Mr. Pinchuk had been the secretary of New Shelton from before 1964 to at least October 30, 1964, and had signed the "Employer's monthly returns" (IT-2101-M) filed by New Shelton for each of the first three quarters of 1964, the last one being for July, August and September and dated October 30, 1964.

4. Mr. Pinchuk submitted a written resignation as secretary of New Shelton on December 21, 1964. At a director's meeting on December 28, 1964, this resignation was accepted and a Mr. Joe Klassner was elected secretary of New Shelton.

5. The withholding taxes here in issue were not paid by the corporation. The records of the Income Tax Bureau show nonpayment. The records of the corporation allegedly showing payment have not been submitted by petitioner. There is no indication of payment in any testimony or document in possession of the Bureau other than in the conclusory allegation in Mr. Pinchuk's petition. Furthermore, any such payment before Mr. Pinchuk's resignation would have been directly contrary to the practice of the corporation to pay only after the end of calendar quarters.

6. Mr. Pinchuk's allegation that he believed such taxes to have been paid has no support in the evidence and cannot be credited.

CONCLUSIONS OF LAW

A. The withholding taxes in issue were not paid by the corporation.

B. Mr. Pinchuk was a responsible officer for the payment of withholding taxes at least until the date of his resignation on December 28, 1964. The fact that the December taxes could have been paid as late as January 31, is irrelevant as the liability accrues

on the date of the payment of wages and the withheld taxes could have been paid over earlier than that date (Seaton v U.S., 254 Fed. Supp. 161, 1966-1 U.S.T.C. §9377 New York Tax Law sections 671-675). Credit will not be given for the period after resignation from December 29 to 31, because of lack of proof of payment dates and amounts paid and because such amount would be de minimis (compare Long v Bacon 239 Fed. Supp. 911, 1965-1 U.S.T.C. §9298).

C. Petitioner has not carried the burden of proof that his failure to pay the withholding taxes was other than willfull.

DECISION

The petition is denied and the deficiency is affirmed together with such interest, if any, as may be due under the Tax Law.

DATED: Albany, New York

September 17, 1971

STATE TAX COMMISSION

Levman Gellman
COMMISSIONER

Abuse Mawley
COMMISSIONER

Milton Korman
COMMISSIONER