

STATE OF NEW YORK
STATE TAX COMMISSION

Stieber, Alfred
Personal Income
Art. 22 (1971)

In the Matter of the Petition

of

ALFRED STIEBER

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

For a Redetermination of a Deficiency or
a Refund of Personal Income (withholding)
Taxes under Article(s) 22 of the
Tax Law for the (Year(s) 1964

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 25th day of August , 1971, she served the within
Notice of Decision (or Determination) by (certified) mail upon Alfred
Stieber (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Alfred Stieber
8 Richard Drive
West Nyack, 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

Linda Wilson

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

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For a Redetermination of a Deficiency or
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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 Werner
Loeb, Esq.

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Werner Loeb, Esq.
90 N. Broadway
Nyack, New York

and by depositing same enclosed in a postpaid properly addressed wrapper in a
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the United States Post Office Department within the State of New York.

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Linda Wilson

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
ALFRED STIEBER	:	DECISION
for Redetermination of Deficiency or	:	
for Refund of Personal Income Tax	:	
under Article 22 of the Tax Law for	:	
the Year 1964.	:	

Petitioner, Alfred Stieber, has filed a petition for redetermination of deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1964. (File No. 13-2501727). 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 April 22, 1971, at 10:00 A.M. Petitioner appeared by Werner Loeb, Esq. The Income Tax Bureau appeared by Edward H. Best, Esq. (Albert J. Rossi, Esq., of Counsel).

ISSUE

I. Is petitioner, Alfred Stieber, liable for unpaid New York State withholding taxes due from Meadowlark Stone Construction Co., Inc. for the period from July 1, 1964, to December 31, 1964?

FINDINGS OF FACT

1. Meadowlark Stone Construction Co., Inc. failed to pay over to the Income Tax Bureau \$742.60 of New York State personal income taxes withheld from its employees for the period from July 1, 1964, to December 31, 1964. Subsequently, the Income Tax Bureau received \$125.00 which was applied to the withholding taxes owing leaving a balance due of \$617.60. The corporation is presently defunct.

2. On March 25, 1968, the Income Tax Bureau issued a Statement of Deficiency imposing a penalty against petitioner, Alfred Stieber, equal to the amount of New York State withholding taxes due from

Meadowlark Stone Construction Co., Inc. for the period from July 1, 1964 to December 31, 1964, upon the grounds that he was a person required to collect, truthfully account for and pay over said taxes and that he willfully failed to do so and accordingly issued a Notice of Deficiency in the sum of \$617.60.

3. Meadowlark Stone Construction Co., Inc. was engaged in the business of masonry contracting in Rockland County during the year 1964. Petitioner, Alfred Stieber, was the president of the corporation. He co-signed all corporate checks. He signed the corporate employer's semi-annual return of New York State personal income tax withheld for the period from July 1, 1964 to December 31, 1964, which he forwarded to the Income Tax Bureau without a remittance.

4. In 1964, Meadowlark Stone Construction Co., Inc. entered into a contract for masonry and concrete work in connection with the construction of a Holiday Inn in Nanuet, New York. A bond for the performance of the corporation's obligations under the contract was issued by the Nassau Surety Company of Newark, New Jersey. During the course of construction, the corporation got into financial difficulties and did not have adequate funds to pay wages, taxes or suppliers. Nassau Surety Company advanced to the corporation funds for the net payroll, not including amounts for the payment of New York State withholding taxes. Petitioner, Alfred Stieber, and his wife also advanced funds to the corporation. He caused the corporation to pay debts of the corporation from these funds in preference to its obligations to New York State for withholding taxes. He also received a salary from the corporation of \$100.00 per week during this period.

CONCLUSIONS OF LAW

A. That petitioner, Alfred Stieber, as an officer of Meadowlark Stone Construction 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, 1964 to December 31, 1964, in accordance with the meaning and intent of sections 674 and 685 (1) of the Tax Law.

B. That the liability of Nassau Surety Company for wages under the contractor's performance bond did not make it liable for the unpaid New York State withholding taxes of Meadowlark Stone Construction Co., Inc. nor did it relieve petitioner, Alfred Stieber, of his obligation to collect, truthfully account for and pay over said taxes. United States v. Hill 368 F.2d 617 (5th Cir., 1966).

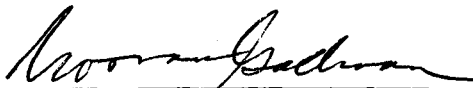
C. That since petitioner, Alfred Stieber, willfully failed or caused Meadowlark Stone Construction Co., Inc. to willfully fail to collect, truthfully account for and pay over New York State withholding taxes due from said corporation for the period from July 1, 1964 to December 31, 1964, therefore a 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.

D. That the petition of Alfred Stieber is denied and the Notice of Deficiency issued March 25, 1968, is sustained.

DATED: Albany, New York

August 25, 1971.

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER