

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

THOMAS LEVIN

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) 1965

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

State of New York
County of Albany

Lynn 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 30th day of March, 1972, she served the within Notice of Decision (or Determination) by (certified) mail upon THOMAS LEVIN

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

Mr. Thomas Levin
10 West Loines Avenue
Merrick, 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

30th day of March, 1972.

Martha Furness

Lynn Wilson

STATE OF NEW YORK
STATE TAX COMMISSION

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a Refund of Personal Income
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State of New York
County of Albany

Lynn 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 30th day of March, 1972, she served the within Notice of Decision (or Determination) by (certified) mail upon JOHN J. MULLALLY, ESQ. (representative of) the petitioner in the within

proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: John J. Mullally, Esq.
128 Pine Street
Brooklyn, New York 11208

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

30th day of March, 1972.

Martha Furrow

Lynn Wilson



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE
BUILDING 9, ROOM 214A
STATE CAMPUS
ALBANY, N. Y. 12226

AREA CODE 518
457-2655, 6, 7

STATE TAX COMMISSION
HEARING UNIT
EDWARD ROOK
SECRETARY TO
COMMISSION

STATE TAX COMMISSION

NORMAN F. GALLMAN, ACTING PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

ADDRESS YOUR REPLY TO

DATED: Albany, New York
March 30, 1972

Mr. Thomas Levin
10 West Loines Avenue
Merrick, L.I., New York

Dear Mr. Levin:

Please take notice of the **DECISION** of
the State Tax Commission enclosed herewith.

Please take further notice that pursuant to **section 690 of**
the Tax Law any proceeding in court to review an adverse decision
must be commenced within **4 months** after
the date of this notice.

Any inquiries concerning the computation of tax due or refund allowed
in accordance with this decision or concerning any other matter relat-
ing hereto may be addressed to the undersigned. These will be referred
to the proper party for reply.

Very truly yours,

Lawrence A. Newman
HEARING OFFICER

cc Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
THOMAS LEVIN : DECISION
for a Redetermination of a Deficiency :
or for Refund of Personal Income Taxes :
under Article 22 of the Tax Law for :
the Year 1965. :

Thomas Levin petitioned for a redetermination of a deficiency or for refund of personal income taxes under Article 22 of the Tax Law for the year 1965.

A formal hearing was held before Lawrence A. Newman, Hearing Officer, in the offices of the State Tax Commission in the City of New York on July 22, 1971.

The petitioner appeared and was represented by John J. Mullally, Esq. The Income Tax Bureau was represented by Edward H. Best, Esq., (Solomon Sies, Esq., of Counsel).

ISSUE

Whether the petitioner is liable as an officer of Allcrete Corp. for withholding tax under section 685(g) of the Tax Law.

FINDINGS OF FACT

1. During the year 1965, the petitioner, Thomas Levin, was president of the Allcrete Corporation. On or about January 31, 1966, the petitioner as president filed the equivalent of a semiannual report of income tax withheld with the New York State Income Tax Bureau. The amount withheld was reported as \$3,986.10. However,

no remittance was made with the report.

2. The petitioner testified that the corporation was in financial difficulty prior to and during January, 1966, and was without funds to pay the withholding taxes to the Income Tax Bureau. Any taxes withheld from employees' earnings were not deposited in a separate trust fund. Although the Allcrete Corporation was not operating profitably, it was supported for some time by substantial loans from the Lawrence Concrete Corporation. When this financial support ended, the Allcrete Corporation ceased operations.

3. The petitioner, Thomas Levin, was, in his capacity as president of the Allcrete Corporation, responsible for the withholding of income taxes and their payment to the Income Tax Bureau. He also had the authority to sign checks drawn on the corporate bank account. The petitioner is not found to be guilty of fraud or bad motives, but of a conscious act or omission as an officer or employee of Allcrete Corporation, to pay over the tax to the Income Tax Bureau.

4. On November 25, 1968, the Income Tax Bureau issued a notice of deficiency against Thomas Levin, under file numbered 11-1993523 in the amount of \$3,986.10, citing section 685(g) of the Tax Law as the reason and basis of the deficiency. A petition for redetermination was timely filed.

DECISION

A. The petitioner, Thomas Levin, has willfully failed to truthfully account for and pay over the taxes withheld from the

salaries and wages of the employees of Allcrete Corporation for the period July 1, 1965 through December 31, 1965, within the meaning and intent of section 685(g) of the Tax Law.

B. The notice of deficiency is sustained, and the petition is denied.

DATED: Albany, New York

March 30, 1972

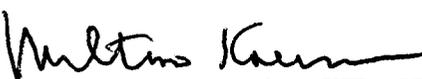
STATE TAX COMMISSION



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