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STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ARNOLD SUEKOFF

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

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) 1968 and 1969.:

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 23rd day of December, 1974, she served the within
Notice of Decision ~~(on Redetermination)~~ by (certified) mail upon ARNOLD SUEKOFF

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

Mr. Arnold Suekoff
120 Irma Drive
Oceanside, 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)~~
~~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

23rd day of December, 1974

Janet Mack

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ARNOLD SUEKOFF

For a Redetermination of a Deficiency or
a Refund of Personal Income
Taxes under Article ~~65~~ 22 of the
Tax Law for the Year(s) 1968 and 1969.:

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 23rd day of December, 1974, she served the within
Notice of Decision ~~xxxRedeterminationxxx~~ by (certified) mail upon RICHARD L.

WEINGARTEN, ESQ. (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Richard L. Weingarten, Esq.
Gerwin & Ehrenclou
150 East 58th Street
New York, New York 10022

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

23rd day of December, 1974

Janet Maek

Martha Funaro



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

MARIO A. PROCACCINO, PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

BUILDING 9, ROOM 214-A
STATE CAMPUS
ALBANY, N.Y. 12227

AREA CODE 518

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

MR. WRIGHT 457-2655
MR. LEISNER 457-2657
MR. COBURN 457-2896

DATED: Albany, New York
December 23, 1974

Mr. Arnold Suekoff
120 Irma Drive
Oceanside, New York

Dear Mr. Suekoff:

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

Please take further notice that pursuant to
Section ~~(37)~~ **690** of the Tax Law, any
proceeding in court to review an adverse deci-
sion must be commenced within **4 months**
from 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 relative
hereto may be addressed to the undersigned.
These will be referred to the proper party for
reply.

Very truly yours,

Nigel G. Wright
HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
ARNOLD SUEKOFF : DECISION
for a Redetermination of a Deficiency :
or for Refund of Personal Income Taxes :
under Article 22 of the Tax Law for :
the Years 1968 and 1969. :

Arnold Suekoff filed a petition under section 689 of the Tax Law for the redetermination of a Notice of Deficiency dated December 29, 1969, in the amount of \$17,306.25 under section 685 (g) of the Tax Law for withholding taxes due from Lowery & Schwartz, Inc. under Article 22 of the Tax Law for the years 1968 and 1969.

A hearing was duly held on March 29, 1973, at the offices of the State Tax Commission, 80 Centre Street, New York City, before Nigel G. Wright, Hearing Officer. The petitioner was represented by Richard L. Weingarten, Esq., of Gerwin & Ehrenclou, Esqs. The Income Tax Bureau was represented by Saul Heckelman, Esq., appearing by Solomon Sies, Esq. The record of said hearing has been duly examined and considered.

ISSUE

The issue in this case is whether petitioner is a responsible officer of a corporation and whether he willfully failed to pay over withholding taxes.

FINDINGS OF FACT

1. Lowery & Schwartz, Inc. was located at 448 West 16th Street, New York City. It was in the business of applying coatings and finishes to paper under contract with printers. The business was owned and operated by James Ciannella until his retirement in 1967 and then by his son, Frank Ciannella, and by petitioner.

2. The petitioner, Mr. Suekoff, had been an accountant working in commercial finance. In 1965, he agreed to become a one-third shareholder contributing \$20,000.00 in cash and a note. He became secretary of the corporation. He supervised the preparation of the payroll although he did not personally prepare it. He had authority to sign checks for the corporation. He had access to the bank account and statements of bank transactions.

3. The corporation suffered a loss of customers as did similar businesses at the time. In January 1968, the firm was factoring its accounts receivable to AIC Financial Corp., of 529 Fifth Avenue, New York City. It also gave a chattel mortgage on its machinery to AIC. The amount received on accounts from AIC dropped from 90% to 60%. The number of employees dropped from about 50% to about 40%. In October 1969, AIC foreclosed its mortgage and locked up the business.

4. Lowery & Schwartz, Inc. owes withholding taxes to New York State. These amounted to \$9,306.25 for the entire calendar year 1968 and \$8,000.00, an estimated amount, for 1969. There is no evidence of more exact figures in the record. Petitioner asserts that withholding returns had been filed. Petitioner stipulates, however, that payments were not made and that petitioner was aware of this at least in the latter part of 1969.

5. Petitioner asserts that even in October 1969, the shareholders had an equity of at least \$60,000.00. This was mostly in the value of some very large and very specialized machinery.

CONCLUSIONS OF LAW

Even if all of petitioner's assertions are true, it is clear that petitioner is liable for the withholding taxes in question. The existence of physical assets out of which the taxes might have been paid by subsequent responsible officers or by the liquidation of assets does not absolve petitioner of his own responsibility.

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The deficiency is found to be correct and is due.

DATED: Albany, New York
December 23, 1974

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER