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STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
SHELDON WOLLMAN

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) 1964, 1965 and
1966.

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 3rd day of May, 1974, she served the within Notice of Decision (or Determination) by (certified) mail upon Sheldon Wollman

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

9 Jeffrey Place
Monsey, New York 10952

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

3rd day of May, 1974.

Joyce S. Van Patten

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

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SHELDON WOLLMAN

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a Refund of Personal Income
Taxes under Article(s) 22 of the
Tax Law for the Year(s) 1964, 1965 and
1966

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 3rd day of May, 1974, she served the within Notice of Decision (or Determination) by (certified) mail upon Murray Antmin, C.P.A. (representative of) the petitioner in the within

proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Murray Antmin, C.P.A.

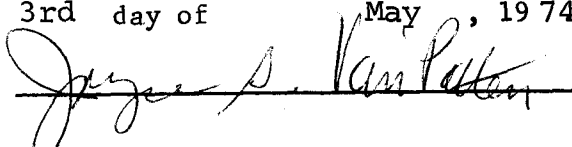
250 Park Avenue
New York, New York 10017

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

3rd day of May, 1974







STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

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

AREA CODE 518
457-2655, 6, 7

STATE TAX COMMISSION
~~NORMAN XXXXXXXXXXXX~~ PRESIDENT
Mario A. Procaccino
A. BRUCE MANLEY
MILTON KOERNER

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

DATED: Albany, New York
May 3, 1974

Mr. Sheldon Wollman
9 Jeffrey Place
Monsey, New York 10952

Dear Mr. Wollman:

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.

Nigel G. Wright
Very truly yours,
Nigel G. Wright

HEARING OFFICER

cc Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
SHELDON WOLLMAN : DECISION
for a Redetermination of a Deficiency :
or for Refund of Personal Income :
Taxes under Article 22 of the Tax Law :
for the Years 1964, 1965 and 1966. :
:

Sheldon Wollman filed a petition for the redetermination of a deficiency issued under date of December 16, 1968, for withheld personal income taxes for which petitioner is alleged to have been responsible under section 685(g) of Article 22 of the Tax Law for the years 1964, 1965 and 1966.

A hearing was duly held at the offices of the State Tax Commission, 80 Centre Street, New York City, on May 15, 1972, before Nigel G. Wright, Hearing Officer. The petitioner was represented by Murray Antmin, C.P.A. The Income Tax Bureau was represented by Saul Heckelman, Esq., appearing by Francis X. Boylan, Esq.

The record of said hearing has been duly examined and considered.

ISSUES

The issues in this case are whether a statement of deficiency which misstates the name of a corporation primarily liable for the tax is valid and whether petitioner is liable under section 685(g)

of the Tax Law as a responsible officer of a corporation who willfully failed to pay over taxes withheld from wages of employees.

FINDINGS OF FACT

1. Petitioner was an officer of S.P.L. Corporation. The corporation operated a cafe under the name of "Pal Joey" which it had purchased prior to 1964. The business was taken over by creditors in 1966 and surrendered its liquor license on November 10, 1966.

2. Petitioner invested in the "Pal Joey" bar on advice of an attorney with two other men prior to 1964. He regarded this as only an investment and the business was run by the other two men. Petitioner, in fact, was ill and hospitalized beginning in late 1965. He may have been hospitalized earlier, but the evidence was too vague and uncertain to sustain a finding. Petitioner would sign withholding statements and checks while he was in the hospital. Petitioner claims he signed a check along with each withholding return and turned both over to one of the other men for mailing. There is no evidence that petitioner signed payroll checks during this time. Petitioner had no knowledge that the business might fail until late 1966 after leaving the hospital.

3. The taxes in dispute amount to \$344.50 for the period April 1, 1964 through September 30, 1964; \$220.80 for the period October 1, 1964 through December 31, 1964; \$482.40 for the period December 1, 1965 through December 31, 1965 and \$100.30 for the period January 1, 1966 through June 30, 1966 for a total of \$1,148.00.

4. The amounts of taxes here in dispute were admitted to be due on withholding tax reconciliation statements filed in the name of "Pal Joey". In addition the amount of \$344.50 was reported by the employer on his withholding tax return (form IT-2101). Such returns were apparently not filed for the other periods.

Notices and demand for said taxes were issued on various dates from March 16, 1965 through November 21, 1966, addressed to "Pal Joey", 550 Third Avenue, New York City. The statement of deficiency states the employer corporation to be Pal Joey Productions Inc. of 550 Third Avenue, New York City. This is hereby found to be erroneous and the correct name of the employer corporation is found to be S.P.L. Corporation of 550 Third Avenue, New York City, the owner of the "Pal Joey" bar. It is also found, however, that the petitioner herein was never at any time misled by this inaccuracy.

CONCLUSIONS OF LAW

The deficiency notice is valid since it did not mislead petitioner and petitioner is at least partly responsible for any misstatement of the identity of the employer corporation. Said notice is ineffective however as to the amount of \$344.50 for the period April 1, 1964 through September 30, 1964, since a return had been filed by the employer corporation and the deficiency notice was not issued within three years thereafter.

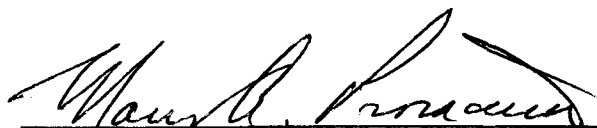
Petitioner is liable for \$220.80 for the period October 1, 1964 through December 31, 1964. For the later periods assessed which began in December, 1965, petitioner has adequately shown

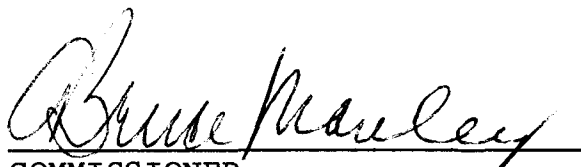
that his own conduct was not "willful" within the meaning of the Tax Law, section 685(g).

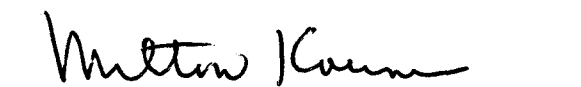
The deficiency is redetermined to be \$220.80 and such amount is due.

DATED: Albany, New York
May 3, 1974

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER