

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
ALAN SHINDEL, JACK CHERCHES
and HAROLD SHAW

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 (x) 22 of the
Tax Law for the Year(s) 1964 and 1965

State of New York
County of Albany

JANET MACK

, 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 16th day of April, 1975, she served the within
Notice of Decision (~~XXXXXXXXXXXX~~) by (certified) mail upon Alan Shindel

(~~XXXXXXXXXXXX~~) the petitioner in the within

proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mr. Alan Shindel

202 Harbor View South
Lawrence, New York 11559

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
16th day of April, 1975.

Katherine D. Manly

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ALAN SHINDEL, JACK CHERCHES

and HAROLD SHAW

For a Redetermination of a Deficiency or
a Refund of Personal Income
Taxes under Article (x) 22 of the
Tax Law for the Year(s) 1964 and 1965 :

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

State of New York
County of Albany

JANET MACK, 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 16th day of April, 1975, she served the within
Notice of Decision (or Determination) by (certified) mail upon Jack Cherches

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

wrapper addressed as follows: Mr. Jack Cherches
200 South Middle Neck Road
Great Neck, New York 11021

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

16th day of April, 1975.

Katherine D. Manly

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ALAN SHINDEL, JACK CHERCHES
and HAROLD SHAW

For a Redetermination of a Deficiency or
a Refund of Personal Income
Taxes under Article (x) 22 of the
Tax Law for the Year(s) 1964 and 1965 :

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

State of New York
County of Albany

JANET MACK

, 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 16th day of April, 1975, she served the within
Notice of Decision (~~XXXXXXXXXXXX~~) by (certified) mail upon Harold Shaw

(~~XXXXXXXXXXXX~~) the petitioner in the within

proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mr. Harold Shaw

303 West 66th Street
New York, New York 10023

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 (~~XXXXXXXXXXXX~~
~~xxx~~) 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

16th day of April, 1975.

Katherine D. Mauley

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ALAN SHINDEL, JACK CHERCHES
and HAROLD SHAW

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 (*) 22 of the
Tax Law for the Year(s) 1964 and 1965 :

State of New York
County of Albany

JANET MACK, 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 16th day of April, 1975, she served the within Notice of Decision (or Determination) by (certified) mail upon Daniel K. Saltzer, ESQ.

(representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: Daniel K. Saltzer, Esq.
225 West 34th Street
New York, New York 10021

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

16th day of April, 1975.

Katherine D. Manly

Janet Mack



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~~
~~Seal of the State of New York~~
~~DEPARTMENT OF TAXATION AND FINANCE~~

A. BRUCE MANLEY
MILTON KOERNER

ADDRESS YOUR REPLY TO

DATED: Albany, New York
April 16, 1975

Mr. Harold Shaw
303 West 66th Street
New York, New York 10023

Dear Mr. Shaw:

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

Please take further notice that pursuant to
Section (S) **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,


Paul B. Coburn

HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A

STATE CAMPUS

ALBANY, N. Y. 12226

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STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

STATE TAX COMMISSION
Saul Heckelman, Acting President

~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~
A. BRUCE MANLEY
MILTON KOERNER

ADDRESS YOUR REPLY TO

DATED: Albany, New York
April 16, 1975

Mr. Alan Shindel
202 Harbor View South
Lawrence, New York 11559

Dear Mr. Shindel:

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 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,


Paul B. Coburn
HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau



STATE OF NEW YORK
 DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A

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STATE TAX COMMISSION
 HEARING UNIT

EDWARD ROOK
 SECRETARY TO
 COMMISSION

STATE TAX COMMISSION
 Saul Heckelman, Acting President
~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~
 A. BRUCE MANLEY
 MILTON KOERNER

ADDRESS YOUR REPLY TO

DATED: Albany, New York
 April 16, 1975

Mr. Jack Cherches
 200 South Middle Neck Road
 Great Neck, New York 11021

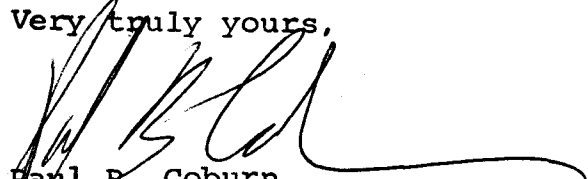
Dear Mr. Cherches:

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

Please take further notice that pursuant to
 Section (s) 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,


 Paul B. Coburn
 HEARING OFFICER

Enc.

cc: Petitioner's Representative
 Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petitions :
of :
ALAN SHINDEL, JACK CHERCHES : DECISION
and :
HAROLD SHAW :
for Redetermination of Deficiency or :
for Refund of Personal Income Tax :
under Article 22 of the Tax Law for :
the Years 1964 and 1965. :
:

Petitioners, Alan Shindel, residing at 202 Harbor View South, Lawrence, New York 11559, Jack Cherches, residing at 200 South Middle Neck Road, Great Neck, New York 11021 and Harold Shaw, residing at 303 West 66th Street, New York, New York 10023, have filed petitions for redetermination of deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1964 and 1965. A formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 14, 1974, at 9:15 A.M. and July 17, 1974, at 9:15 A.M. Petitioners appeared by Daniel K. Saltzer, Esq. The Income Tax Bureau appeared by Saul Heckelman, Esq., (Solomon Sies, Esq., and James A. Scott, Esq. of counsel).

ISSUE

Are petitioners, Alan Shindel, Jack Cherches and Harold Shaw, liable for unpaid New York State withholding taxes due from American Standard T.V. Tube Corp. in the total sum of \$1,437.27 for the months of April, July, November and December, 1964 and October, 1965?

FINDINGS OF FACT

1. American Standard T.V. Tube Corp. filed New York State "Employer's Monthly Return of New York State Personal Income Tax Withheld" (Forms IT-2101-M) for the months of January, February, March, May, June, August, September and October, 1964. The withholding taxes due for said months have been paid. It did not file said returns and pay over the taxes withheld for the following months during said year.

<u>Month</u>	<u>Unpaid Withholding Tax</u>
April	\$ 144.90
July	200.05
November	317.00
December	390.35
Total	<u>\$1,052.30</u>

On or about February 1, 1965, it filed a New York State "Reconciliation of Personal Income Tax Withheld for Employer's Filing Monthly and Semi-Annual Returns" (Form IT-2103 (BNS) for the year 1964.

2. American Standard T.V. Tube Corp. filed New York State "Employer's Monthly Return of New York State Personal Income Tax Withheld" (Forms IT-2101-M) for the months of January through September, 1965. The withholding taxes for said months have not been paid. It did not file said return and pay over the taxes withheld for the month of October, 1965, in the sum of \$384.97. It filed a petition in bankruptcy on October 29, 1965, and did not incur any withholding tax liabilities after said date. It did not file a New York State "Reconciliation of Personal Income Tax Withheld for Employer's Filing Monthly and Semi-Annual Returns" (Form IT-2103 (BNS) for the year 1965.

3. On October 26, 1971, the Income Tax Bureau issued statements of deficiency against petitioners, Alan Shindel, Jack Cherches and Harold Shaw, imposing a penalty in the sum of \$1,437.27, which was equal to the amount of unpaid withholding taxes due from American Standard T.V. Tube Corp. for the months of April, July, November and December, 1964, and October, 1965, upon the grounds that they were persons required to collect, truthfully account for and pay over said taxes and that they willfully failed to do so. In accordance with the aforesaid statements of deficiency, it issued notices of deficiency against them in the sum of \$1,437.27.

4. Petitioner, Jack Cherches, was president of American Standard T.V. Tube Corp. during the period from January, 1964 through October, 1965. Petitioner, Harold Shaw, was vice-president of said corporation during said period. Petitioner, Alan Shindel, was secretary and treasurer of said corporation during said period. They signed corporate checks and tax returns. They actively participated in the daily management of the business affairs of the corporation. Their wives were substantial stockholders in the corporation.

CONCLUSIONS OF LAW

A. That petitioners, Alan Shindel, Jack Cherches and Harold Shaw, as officers of American Standard T.V. Tube Corp. were persons required to collect, truthfully account for and pay over New York State withholding taxes in the total sum of \$1,437.27 due from said corporation for the months of April, July, November and December, 1964, and October, 1965, in accordance with the meaning and intent of section 674 and former section 685(1) of the Tax Law.

B. That since petitioners, Alan Shindel, Jack Cherches and Harold Shaw, willfully failed to collect, truthfully account for and pay over New York State withholding taxes due from American

Standard T.V. Tube Corp. for the months of April, July, November and December, 1964, and October, 1965, in the total sum of \$1,437.27, therefore, a penalty equal to the amount of unpaid withholding taxes was properly assessed against them in accordance with the meaning and intent of section 685(g) of the Tax Law.

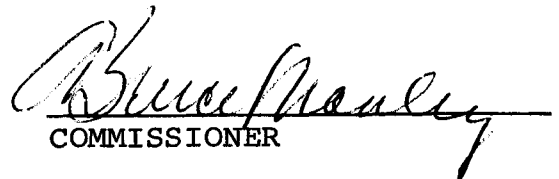
C. That since American Standard T.V. Tube Corp. did not file "Employer's Monthly Return of New York State Personal Income Tax Withheld" (Forms IT-2101-M) for the months of April, July, November and December, 1964, as required by section 674(a) of the Tax Law, therefore, a penalty pursuant to section 685(g) of the Tax Law could be imposed at any time against petitioners, Alan Shindel, Jack Cherches and Harold Shaw, as responsible officers of said corporation in accordance with the meaning and intent of section 683(c)(1)(A) of the Tax Law. The "Reconciliation of Personal Income Tax Withheld for Employer's Filing Monthly and Semi-Annual Returns" (Form It-2103 (BNS) is not a tax return within the meaning and intent of sections 674(a) or 683 of the Tax Law. Therefore, the notices of deficiency issued against petitioners on October 26, 1971, more than six years after the date of the filing of said reconciliation statement, were not barred by the three-year statute of limitations on assessments set forth in section 683(a) of the Tax Law.

D. That the petitions of Alan Shindel, Jack Cherches and Harold Shaw are denied and the notices of deficiency issued October 26, 1971, are sustained.

DATED: Albany, New York
April 16, 1975

STATE TAX COMMISSION

PRESIDENT


COMMISSIONER


COMMISSIONER