

FORMAL HEARING

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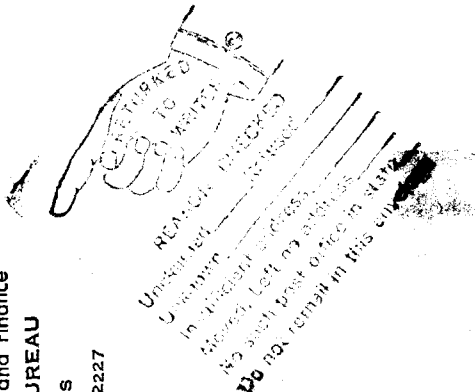
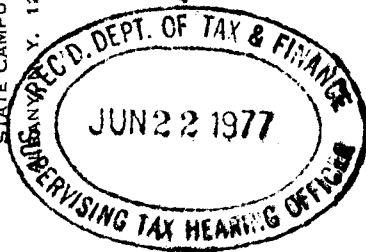
STATE OF NEW YORK

Department of Taxation and Finance

TAX APPEALS BUREAU

STATE CAMPUS

N.Y. 12227



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Mr. Robert Berman
2106 Ellen Street
Merrick, New York

11566

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ROBERT BERMAN

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article(s) 22 of the :
Tax Law for the Year(s) ~~or Period(s)~~ :
1970 and 1971.

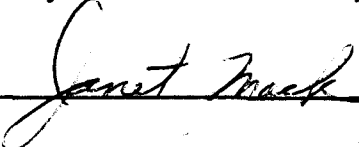
State of New York
County of Albany

Violet Walker, 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 14th day of June, 1977, she served the within Notice of Decision by (certified) mail upon Robert Berman (~~representative of~~) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mr. Robert Berman
2106 Ellen Street
Merrick, New York 11566
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 Postal Service within the State of New York.

That deponent further says that the said addressee is the (~~representative of the~~) 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

14th day of June, 1977.





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ROBERT BERMAN

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
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State of New York
County of Albany

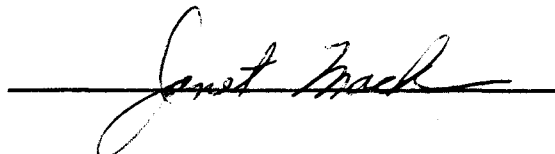
Violet Walker, being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 14th day of June, 1977, she served the within
Notice of Decision by (certified) mail upon Harvey R. Blau, Esq.

(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Harvey R. Blau, Esq.
Blau & Kramer, P.C.
410 Jericho Turnpike
Jericho, NY 11753
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 Postal Service within the State of New York.

That deponent further says that the said addressee is the (representative
of the) 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

14th day of June, 1977







STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N.Y. 12227

ADDRESS YOUR REPLY TO

June 14, 1977

TELEPHONE: (518) **457-1723**

Mr. Robert Berman
2106 Ellen Street
Merrick, New York 11566

Dear Mr. Berman:

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

Please take further notice that pursuant to
Section(~~2~~) **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.

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. They
will be referred to the proper party for reply.

Very truly yours,

Paul B. Coburn
Supervising Tax
Hearing Officer

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
ROBERT BERMAN	:	DECISION
for Redetermination of a Deficiency	:	
or for Refund of Personal Income Tax	:	
under Article 22 of the Tax Law for	:	
the Years 1970 and 1971.	:	

Petitioner, Robert Berman, 2106 Ellen Street, Merrick, New York 11566, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1970 and 1971. (File No. 01030).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on August 26, 1976 at 1:30 P.M. Petitioner appeared by Harvey R. Blau, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Alexander Weiss, Esq., of counsel).

ISSUE

Whether petitioner, Robert Berman, is liable for unpaid New York State withholding taxes due from the Meyers Millbrand Corp. for the years 1970 and 1971.

FINDINGS OF FACT

1. On February 28, 1972, the Income Tax Bureau issued a Statement of Deficiency against petitioner, Robert Berman, equal to the amount of New York State withholding taxes due from Meyers Millbrand Corp., for the periods March 1, 1970 to December 31, 1970 and January 1, 1971 to April 16, 1971. The statement was issued upon the grounds that the petitioner was a person required to collect, truthfully account for and pay over said taxes, and that he willfully failed to do so. Accordingly, the Income Tax Bureau issued a Notice of Deficiency in the amount of \$16,410.00.

2. Petitioner, Robert Berman, was secretary and vice-president of the Meyers Millbrand Corp., a corporation operated by his father and another individual named Eckert. The stock was owned by the father, except for a nominal amount gifted to the petitioner and his stepmother. Voting rights were retained by the donor.

3. Petitioner, Robert Berman, handled sales for the Meyers Millbrand Corp. Prior to January 1970, the only time he or his stepmother signed corporate papers and/or checks was when his father was not available. Petitioner's wife was also a vice-president of Meyers Millbrand Corp. but received no remuneration from the company.

4. Petitioner, Robert Berman, was salaried by the Meyers Millbrand Corp. The petitioner's father died in January 1970. A production manager who was hired by his father continued to run the company's affairs. The petitioner continued his sales position, attempted to collect on outstanding accounts and signed checks for the corporation. The business ceased on or about November 19, 1970. The corporation filed an assignment for the benefit of creditors.

5. Petitioner, Robert Berman, presented no documentary or other substantial evidence to show what the actual withholding taxes due New York State were for the period in issue. The Income Tax Bureau estimated that for the withholding tax period March 1, 1970 to December 31, 1970, there was due \$12,160.00, and for the period January 1, 1971 to April 16, 1971, \$4,250.00 was due in withholding taxes.

CONCLUSIONS OF LAW

A. That petitioner, Robert Berman, as vice-president and secretary of Meyers Millbrand Corp., was a person required to collect, truthfully account for and pay over New York State withholding taxes due from said corporation for the period March 1, 1970 through November 19, 1970, in accordance with the meaning and intent of sections 674 and 685(n) of the Tax Law.

B. That since petitioner, Robert Berman, willfully failed to account for and pay over New York State withholding taxes due from Meyers Millbrand Corp. for the period March 1, 1970 through November 19, 1970, therefore, a penalty equal to the 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.

C. That since Meyers Millbrand Corp. ceased doing business on November 19, 1970, therefore petitioner, Robert Berman, could not be liable for any withholding taxes collected after that date. The amount of unpaid withholding taxes for the period March 1, 1970 through November 19, 1970, based on an estimate computed by the Income Tax Bureau is as follows:

Income Tax Bureau estimated March 1, 1970 through
December 31, 1970, \$12,160.00.

Computation for period March 1, 1970 through November 19,
1970, based on a daily average, \$10,491.00.

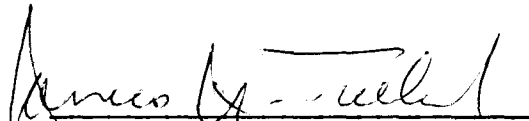
$$\left(\frac{264}{306} \times \$12,160 = \$10,491.00\right)$$

D. That the petition of Robert Berman is granted to the extent that the period of assessment be for the period March 1, 1970 through November 19, 1970 and that the penalty due be in

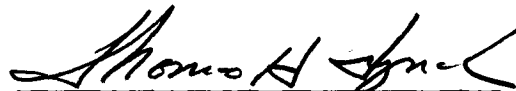
the amount of \$10,491.00; that the Income Tax Bureau is hereby directed to accordingly modify the Notice of Deficiency issued February 28, 1972; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York
June 14, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

STATE OF NEW YORK
STATE TAX COMMISSION

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ROBERT BERMAN

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Taxes under Article(s) 22 of the :
Tax Law for the Year(s) ~~xxx Period(s)~~ :
1970 and 1971

State of New York
County of Albany

Marsina Donnini, 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 22 day of July, 1977, she served the within Notice of Decision by (certified) mail upon Robert Berman ~~(representative of)~~ the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mr. Robert Berman
1815 Yale Drive
Merrick, New York 11566
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 Postal Service within the State of New York.

That deponent further says that the said addressee is the ~~(representative of the)~~ 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

22 day of July, 1977.

Marsina Donnini

Janet Mack