

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petitions	:	
	:	
of	:	
	:	
EUGENE BROWN AND	:	DECISION
DAVID A. LOWN	:	
	:	
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, Eugene Brown, residing at 1777 S. Wasatch Drive, Salt Lake City, Utah 84108, filed a petition for redetermination of a deficiency or for refund of personal income taxes under Article 22 of the Tax Law for the years 1970 and 1971. (File No. 10491).

Petitioner, David A. Lown, residing at 111 East 80th Street, New York, New York 10021, also filed a petition for redetermination of a deficiency or for refund of personal income taxes under Article 22 of the Tax Law for the years 1970 and 1971. (File No. 10492)

A formal hearing was held before Edward Goodell, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on December 14, 1976 at 1:15 P.M. Petitioner, Eugene Brown, appeared by Benjamin Rosenberg, Esq. Petitioner, David A. Lown did not appear at said hearing. The Income Tax Bureau appeared by Peter Crotty, Esq., (James Scott, Esq., of counsel).

ISSUE

Whether petitioners, Eugene Brown and David A. Lown, are jointly and severally liable as officers of Programmed Personal Service Corp., for New York State withholding taxes.

FINDINGS OF FACT

1. Programmed Personal Service Corp., with offices at 660 Fifth Avenue, New York, New York, hereafter referred to as "The Corporation," was engaged, during the years 1970 and 1971, in the business of providing telephoned horoscopes to subscribers for said service.

2. (a) During the years 1970 and 1971, the petitioner, Eugene Brown, was president of the Corporation.

(b) During the years 1970 and 1971, the petitioner, David A. Lown, was chairman of the Board of Directors and secretary of the Corporation.

(c) Both said Eugene Brown and said David A. Lown had authority to sign checks of the Corporation.

3. (a) On March 25, 1974, the Income Tax Bureau issued a Statement of Deficiency addressed to petitioner, Eugene Brown, pursuant to sections 685(g) and 685(n) of the Tax Law, by reason of his failure "to collect, truthfully account and pay over"

withholding taxes for the period of April 1, 1970 to December 31, 1970 and for the period of April 1, 1971 to July 31, 1971 amounting in the aggregate to \$3,836.50, required to be withheld by the Corporation from wages paid by it during said periods.

(b) In accordance with said Statement of Deficiency, a Notice of Deficiency was issued on March 25, 1974, addressed to the petitioner, Eugene Brown, in the said sum of \$3,836.50.

4. Thereafter, the petitioner, Eugene Brown, timely filed a petition for redetermination of taxes in the amount of \$3,836.50, alleging that the "total amount of tax paid for each year or period" aforesaid "is zero(\$0.00)" and claiming as a ground for redetermination of the said claimed deficiency that "there was another officer of the Corporation who was treasurer of the Corporation" and that "I was not the financial officer of the corporation and was not aware that this tax had not been paid."

5. On September 24, 1975, the aforesaid deficiency was reduced by the Income Tax Bureau from \$3,836.50 to \$3,087.80 by reason of a first and final dividend of \$748.70 that had been received in connection with and as a result of the bankruptcy proceeding of the Corporation.

6. (a) On October 27, 1975, the Income Tax Bureau issued a Statement of Deficiency addressed to the petitioner, David A. Lown, pursuant to sections 685(g) and 685(n) of the Tax Law, by

reason of his failure "to collect, truthfully account for and pay over" withholding taxes for the period April 1, 1970 to December 31, 1970 and for the period of April 1, 1971 to July 31, 1971 amounting in the aggregate to \$3,087.80, required to be withheld by the Corporation from wages paid by it during said periods.

(b) In accordance with said Statement of Deficiency, a Notice of Deficiency was issued on October 27, 1975, addressed to the petitioner, David A. Lown, in the said sum of \$3,087.80.

7. Thereafter, the petitioner, David A. Lown, timely filed a petition for redetermination of taxes in the amount of \$3,087.80, alleging that the "total amount of tax paid for each year or period is unknown" and claiming as the reasons for redetermination, among others, that he "had no responsibility to file taxes or returns" with respect to the Corporation and that "fiscal authority was lodged in person of president of Corporation, Eugene Brown."

8. During the course of a tax conference held on May 10, 1976 between representatives of the Tax Department, the petitioner Eugene Brown and the said petitioner's representative it was not denied by the said petitioner or by his representative that the

said petitioner is responsible for the payment of the aforesaid withholding taxes for the period of April 1, 1970 to December 31, 1970 and the period of April 1, 1971 to July 31, 1971, but the position taken by the said petitioner and his representative at said time was that responsibility therefor should be shared by the said petitioner with the petitioner, David A. Lown.

Said position was reiterated by the said petitioner's representative at the hearing held herein on December 14, 1976.

9. During the course of a tax conference held on May 10, 1976 between representatives of the Tax Department and the petitioner, David A. Lown, it was not denied by the said petitioner that he is responsible for the payment of the aforesaid withholding taxes for the period of April 1, 1970 to December 31, 1970 and the period of April 1, 1971 to July 31, 1971, but the position taken by the said petitioner at said time was that responsibility therefor should be shared by the said petitioner with the petitioner, Eugene Brown.

10. Petitioners, Eugene Brown and David A. Lown, during the aforesaid periods from April 1, 1970 to December 31, 1970 and from April 1, 1971 to July 31, 1971, were officers of the Corporation and as such officers, each was under the duty to collect, truthfully account for and pay over the withholding taxes required to be withheld by the Corporation from wages paid by it during said periods.

CONCLUSIONS OF LAW

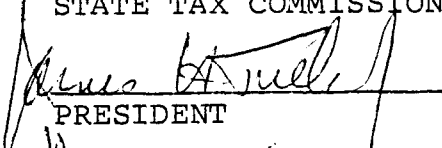
A. That petitioners, Eugene Brown and David A. Lown, during the aforesaid periods from April 1, 1970 to December 31, 1970 and from April 1, 1971 to July 31, 1971 were "persons" as defined by section 685(n) of the Tax Law and as such "persons" were each under the duty as provided in section 685(g) of the Tax Law to collect, truthfully account for and pay over the withholding taxes required to be withheld by the Corporation from wages paid by it during said periods.


B. That petitioners, Eugene Brown and David A. Lown, are jointly and severally liable for the deficiency imposed against them pursuant to the Notice of Deficiency addressed to petitioner, Eugene Brown, dated March 25, 1974 as amended on September 24, 1975 and the Notice of Deficiency addressed to the petitioner, David A. Lown, dated October 27, 1975.

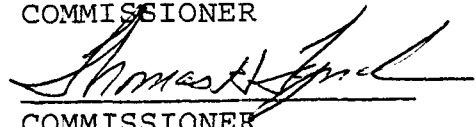
C. That the petition of Eugene Brown and the petition of David A. Lown are both denied and the said Notice of Deficiency dated March 25, 1974 as amended on September 24, 1975 and the said Notice of Deficiency dated October 25, 1975 are each sustained.

DATED: Albany, New York
July 29, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER