

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

SAMUEL EPAND

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~~) ~~xxxx~~ Period(s) 1970.

State of New York
County of Albany

Bruce Batchelor, being duly sworn, deposes and says that
he is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 14th day of March, 1977, he served the within
Notice of Decision by (certified) mail upon Samuel
Eband (~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. Samuel Eband
159 Riverside Drive
New York, New York 10032

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 March, 1977.

Bruce Batchelor

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

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

STATE TAX COMMISSION

ADDRESS YOUR REPLY TO

March 14, 1977

TELEPHONE: (518) 457-1723

Mr. Samuel Eband
159 Riverside Drive
New York, New York 10032

Dear Mr. Eband:

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

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

Frank J. Puccia
Very truly yours:

FRANK J. PUCCIA
SUPERVISOR OF SMALL
CLAIMS HEARINGS

Enc.

cc: ~~Section 6051(a)(2)(B) Representative Tax~~

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
SAMUEL EPAND : DECISION
for Redetermination of a Deficiency or for :
Refund of Personal Income Taxes under Article 22 :
of the Tax Law for the Year 1970. :

Petitioner, Samuel Epand, residing at 159 Riverside Drive, New York, New York 10032, has filed a petition for redetermination of a deficiency or for refund of personal income taxes under Article 22 of the Tax Law for the year 1970 (File No. 13-1914997).

A small claims hearing was scheduled before Joseph A. Milack, Small Claims Hearing Officer, on September 15, 1976, at 9:15 a.m. at the offices of the State Tax Commission, Two World Trade Center, New York, New York. Prior to the small claims hearing, petitioner advised the State Tax Commission, in writing, that he waived a small claims hearing and requested that the State Tax Commission decide the case upon the entire record contained in the file. The State Tax Commission renders the following decision after due consideration of said record.

ISSUE

Whether petitioner, Samuel Epand, is liable for unpaid New York State withholding taxes due from Ellie Fashions, Inc. for the year 1970.

FINDINGS OF FACT

1. Ellie Fashions, Inc. failed to pay over to the Income Tax Bureau New York State personal income taxes withheld from its employees during the year 1970 in the sum of \$219.10. The corporation is presently defunct.

2. On April 12, 1974, the Income Tax Bureau issued a Statement of Deficiency against petitioner, Samuel Eband, imposing a penalty equal to the amount of New York State withholding taxes due from Ellie Fashions, Inc. for the year 1970, upon the grounds that he was a person required to collect, truthfully account for, and pay over said taxes and that he willfully failed to do so. In accordance with the aforesaid Statement of Deficiency, it issued a Notice of Deficiency in the sum of \$219.10.

3. According to information obtained by the Income Tax Bureau, petitioner, Samuel Eband, was secretary-treasurer of Ellie Fashions, Inc.

4. Petitioner, Samuel Eband, contends that he was neither an officer nor a stockholder of Ellie Fashions, Inc.; but, was in fact, merely the manager. In addition, he contends that all the returns and payroll forms were the sole responsibility of the corporation's accountant.

5. Petitioner, Samuel Eband, submitted nothing to clarify his responsibilities as manager of Ellie Fashions, Inc. or his relationship with said corporation.

CONCLUSIONS OF LAW

A. That, petitioner, Samuel Epand, has not sustained the burden of proof necessary to substantiate that he was not a person required to collect, truthfully account for and pay over New York State withholding taxes due from Ellie Fashions, Inc. for the year 1970, in accordance with the meaning and intent of sections 674 and 685(n) of the Tax Law.


B. That, petitioner, Samuel Epand, has not sustained the burden of proof necessary to substantiate that he did not willfully fail or cause Ellie Fashions, Inc. to willfully fail to collect, truthfully account for and pay over New York State withholding taxes due from said corporation for the year 1970; therefore, a penalty equal to the total amount of the unpaid withholding taxes was properly assessed in accordance with the meaning and intent of section 685(g) of the Tax Law.

C. That, the petition of Samuel Epand is denied and the Notice of Deficiency issued on April 12, 1974 is sustained.

DATED: Albany, New York
March 14, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER