

In the Matter of the Petition

of

LEONARD GAM

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or
a Revision of a Determination or a Refund
of Personal Income
Taxes under Article ~~(x)~~ 22 of the
Tax Law for the Year(s) ~~or Period(s)~~
1965 through 1968.

State of New York
County of Albany

Bruce Batchelor, 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 31st day of May, 1977, she served the within
Notice of Decision by (certified) mail upon Leonard Gam
(~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed

as follows:
Mr. Leonard Gam
134 North King Street
Elmont, New York 11003

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

31st day of May, 1977.

Bruce Batchelor

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
LEONARD GAM

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article (X) 22 of the :
Tax Law for the Year(s) ~~xxx~~ Period(s) :
1965 through 1968.

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 31st day of May , 1977, he served the within
Notice of Decision by (certified) mail upon Sidney Meyers
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed

as follows: Sidney Meyers, Esq.
51 Chambers Street
New York, New York 10007

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

31st day of May , 1977.

Bruce Batchelor

Janet Mack



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

May 31, 1977

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

Mr. Leonard Gam
134 North King Street
Elmont, New York 11003

Dear Mr. Gam:

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

Please take further notice that pursuant to
Section(8) **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,
Frank J. Puccia

Frank J. Puccia
Supervisor of
Small Claims Hearings

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
LEONARD GAM :
for Redetermination of a Deficiency or :
for Refund of Personal Income Taxes :
under Article 22 of the Tax Law for :
the Years 1965 through 1968. :
:

DECISION

Petitioner, Leonard Gam, residing at 134 North King Street, Elmont, New York 11003, 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 years 1965 through 1968 (TAB #12093).

A small claims hearing was held before Joseph A. Milack, Small Claims Hearing Officer, on September 13, 1976 at 2:45 P.M. at the offices of the State Tax Commission, Two World Trade Center, New York, New York. The petitioner appeared by Sidney Meyer, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq., (William Fox, Esq. of counsel).

ISSUES

I. Whether petitioner, Leonard Gam, is liable for unpaid New York State withholding taxes due from Jayson Lithographers Inc. for the years 1965 through 1968 in accordance with the meaning and intent of section 685(g) of the Tax Law.

II. Whether the Notice of Deficiency issued on August 25, 1975 against petitioner, Leonard Gam, imposing a penalty pursuant

to section 685(g) of the Tax Law was issued within the period of the statute of limitations in accordance with the meaning and intent of section 683(a) of the Tax Law.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Petitioner, Leonard Gam, a fifty percent stockholder and the secretary of Jayson Lithographers Inc. was predominately concerned with the technical and production phases of said corporation. The books and records were maintained by the corporate president and treasurer, Sidney Leppi, C.P.A., who also ordered and paid for inventory and supplies and prepared all tax returns. Petitioner, Leonard Gam, co-signed all corporate checks. Although he did not sign New York State withholding tax returns, he did on occasion sign other Federal and New York State tax returns.

2. Petitioner, Leonard Gam, did not sustain the burden of proof required to substantiate his contention that he was not a person required to collect, truthfully account for and pay over withholding taxes due from Jayson Lithographers Inc. during the years at issue. His failure to exercise the authority he had as secretary of said corporation and his willingness to allow Sidney Leppi a freehand in the accounting phases of Jayson Lithographers Inc. does not justify a conclusion to the contrary.

3. Petitioner, Leonard Gam, did not sustain the burden of proof required to establish that he did not willfully fail or cause Jayson Lithographers Inc. to willfully fail to collect, truthfully account for and pay over to New York State withholding taxes due from said corporation for the years 1965 through 1968.

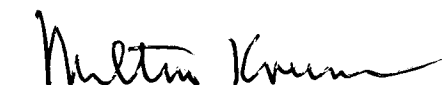
4. The Income Tax Bureau received the withholding tax returns of Jayson Lithographers Inc. for the years 1965 through 1968 on September 21, 1973 and issued a Notice of Deficiency on August 15, 1975 against petitioner, Leonard Gam, imposing a penalty pursuant to section 685(g) of the Tax Law. Said Notice of Deficiency was issued within three years after the withholding tax returns were filed and was thereby issued within the statute of limitations.

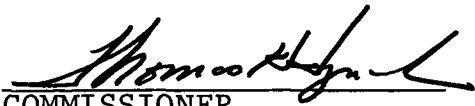
5. The petition of Leonard Gam is denied and the Notice of Deficiency issued against him on August 25, 1973 in the amount of \$4,711.30 is sustained.

DATED: Albany, New York
May 31, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER