

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ROBERT E. HELLER

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or
a Revision of a Determination or a Refund
of Personal Income
Taxes under Article ~~(8)~~ 22 of the
Tax Law for the Year ~~(8)~~ ~~1970~~ ~~(8)~~
1970.

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 16 day of August, 1977, she served the within
Notice of Decision by (certified) mail upon Robert E.
Heller ~~(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 E. Heller
1051 N.E. 152nd Terrace
North Miami Beach, Florida 33162
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)~~
~~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

16th day of August, 1977.

Marsina Donnini

Janet Mack



STATE OF NEW YORK
STATE TAX COMMISSION
TAX APPEALS BUREAU
ALBANY, NEW YORK 12227

JAMES H. TULLY JR., PRESIDENT
MILTON KOERNER
THOMAS H. LYNCH

August 16, 1977

Mr. Robert E. Heller
1051 N.E. 15th Terrace
North Miami Beach, Florida 33162

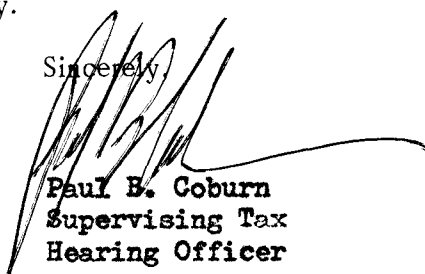
Dear Mr. Heller:

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

You have now exhausted your right of review at the administrative level. Pursuant to section(8) **690** of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within **4 months** from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,


Paul B. Coburn
Supervising Tax
Hearing Officer

cc: ~~Petitioner's Representative~~

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
ROBERT E. HELLER	:	DECISION
for Redetermination of a Deficiency	:	
or for Refund of Personal Income Tax	:	
under Article 22 of the Tax Law for	:	
the Year 1970.	:	

Petitioner, Robert E. Heller, 1051 N. E. 152nd Terrace, North Miami Beach, Florida 33162, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1970. (File No. 13225).

On May 10, 1977, the petitioner waived a formal 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, Robert E. Heller, was a person required to collect, truthfully account for and pay over the withholding taxes of the employees of Welcome Aboard Vacation Centers, Inc., within the meaning and intent of section 685(n) of the Tax Law for the period January 1, 1970 through May 31, 1970; and if so

required, whether petitioner willfully failed to collect, truthfully account for and pay over the withholding taxes of said corporation within the meaning and intent of section 685(g) of the Tax Law.

FINDINGS OF FACT

1. Welcome Aboard Vacation Centers, Inc. failed to pay over to the Income Tax Bureau, New York State personal income taxes withheld from its employees for the period January 1, 1970 through May 31, 1970 in the sum of \$3,110.58.

2. On June 25, 1973, the Income Tax Bureau issued a Statement of Deficiency against petitioner, Robert E. Heller, imposing a penalty equal to the amount of New York State withholding taxes due from Welcome Aboard Vacation Centers, Inc. for the period January 1, 1970 through May 31, 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. Accordingly, a Notice of Deficiency was issued totalling \$3,110.58.

3. Petitioner, Robert E. Heller, was a stockholder and held the office of secretary of Welcome Aboard Vacation Centers, Inc. during the period in issue. He was authorized to sign checks for the aforementioned corporation and was an authorized party, by a corporate resolution of said corporation on June 6, 1969, to open an account, in the corporate name, with Chemical Bank New York Trust Company.

4. Petitioner, Robert E. Heller, took over control of

Welcome Aboard Vacation Centers, Inc., as president on October 1, 1970.

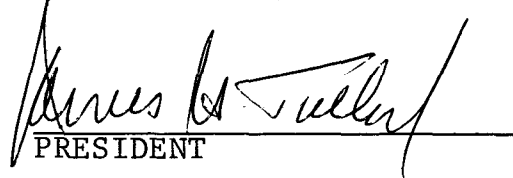
CONCLUSIONS OF LAW

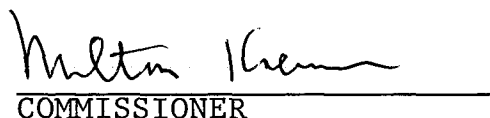
A. That petitioner, Robert E. Heller was an officer with a duty to collect, truthfully account for and pay over the withholding taxes of Welcome Aboard Vacation Centers, Inc. for the period January 1, 1970 through May 31, 1970 within the meaning and intent of section 685(n) of the Tax Law and that petitioner did willfully fail or cause Welcome Aboard Vacation Centers, Inc. to willfully fail to collect truthfully account for, and pay over said taxes for said period within the meaning and intent of section 685(g) of the Tax Law.

B. That the petition of Robert E. Heller is denied and the Notice of Deficiency issued June 25, 1973 is sustained.

DATED: Albany, New York
August 16, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER