

In the Matter of the Petition

:

of

HAYES S. MARTIN

:

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 ~~(xxxx Period)~~ :
1972

State of New York
County of Albany

John Huhn, 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 29th day of September, 19 77, she served the within Notice of Decision by (certified) mail upon Hayes S. Martin

~~(xxxxxx xxxxx)~~ the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Hayes S. Martin
220 East 60th Street
New York, NY 10022

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 ~~(xxxxxx xxxxx of the)~~ petitioner herein and that the address set forth on said wrapper is the last known address of the ~~(xxxxxx xxxxx of the)~~ petitioner.

Sworn to before me this
29th day of September, 1977.

Ernest Buch

John Huhn



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

September 29, 1977

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

**Hayes S. Martin
220 East 60th Street
New York, NY 10022**

Dear Mr. Martin:

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 ~~9~~ **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,

**Joseph Chyrywaty
Hearing Examiner**

cc: Petitioner's Representative
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :

of :

HAYES S. MARTIN : DECISION

for Redetermination of Deficiency or :
for Refund of Personal Income Taxes :
under Article 22 of the Tax Law for :
the Year 1972. :

Petitioner, Hayes S. Martin, residing at 220 East 60th Street, New York, New York 10022, filed a petition for redetermination of deficiency or for refund of personal income taxes under Article 22 of the Tax Law for the year 1972. (File No. 14005). A small claims hearing was held before Harry Huebsch, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on April 25, 1977 at 1:15 P.M. Petitioner appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq. (James J. Morris, Esq. of counsel).

ISSUE

Was petitioner, Hayes S. Martin, liable for the penalty imposed against him in accordance with section 685(g) of the Tax Law with respect to unpaid New York State withholding taxes due from Long Island Laboratories for the year 1972?

FINDINGS OF FACT

1. Long Island Laboratories, Inc. failed to pay over to the Income Tax Bureau \$1,118.14 of New York State personal income taxes withheld from wages and salaries paid to its employees during the period December 1 to December 15 in the year 1972.

2. Long Island Laboratories, Inc. was a wholly owned subsidiary of Cybertek, Inc. Both corporations were involved in preparations for bankruptcy in late 1972. Petitioner was the majority stockholder of Cybertek, Inc. and was a director of said corporation. On November 29, 1972, petitioner was elected as acting secretary with check signing authority restricted to bankruptcy matters for both corporations.

3. Petitioner signed Form IT-2101, employers return - personal income tax withheld, covering the period December 1, 1972 to December 15, 1972. On March 10, 1973, petitioner also signed Form IT-2103, reconciliation of personal income tax withheld, which was the final return of Long Island Laboratories, Inc.

4. Petitioner contended that he had authorized a check in payment to New York State which was issued but "bounced" because he was required to transfer the corporation's funds to another bank to avoid seizure by creditors.

CONCLUSIONS OF LAW

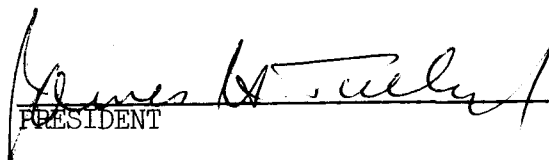
A. That petitioner, Hayes S. Martin, was a person required to collect, truthfully account for and pay over New York State withholding taxes due from Long Island Laboratories, Inc. for the period December 1 to December 15 in the year 1972 in accordance with the meaning and intent of section 685(n) of the Tax Law; and that since petitioner willfully failed or caused Long Island Laboratories, to willfully fail to collect, truthfully account for and pay over New York State withholding taxes due from said corporation, a penalty equal to the total amount of unpaid withholding taxes was properly asserted against him in accordance with the meaning and intent of section 685(g) of the Tax Law.

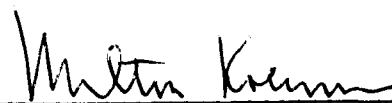
B. That the petition of Hayes S. Martin is denied and the Notice of Deficiency in the amount of \$1,118.14 issued December 28, 1973 is sustained.

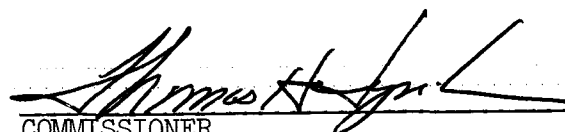
DATED: Albany, New York

STATE TAX COMMISSION

September 29, 1977


PRESIDENT


COMMISSIONER


COMMISSIONER