

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
MAX M. MILLER and ETHEL MILLER

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)~~ ~~xxxxxx~~ ~~Period(s)~~ 1972. :

State of New York
County of Albany

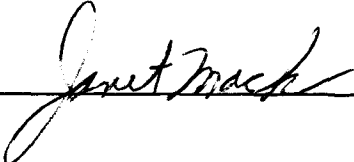
John Huhn , being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 3rd day of October , 1977, she served the within
Notice of Decision by (certified) mail upon Max M. and Ethel
Miller ~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. and Mrs. Max M. Miller
18 Strawberry Lane
Roslyn Heights, New York 11576

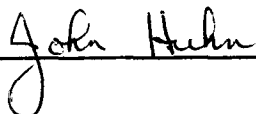
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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

3rd day of October , 1977.





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
MAX M. MILLER and ETHEL MILLER

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) or Period(s)~~ 1972. :

State of New York
County of Albany

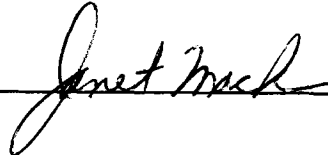
John Huhn, being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 3rd day of October, 1977, she served the within
Notice of Decision by (certified) mail upon Justin W. D'Atri, Esq.

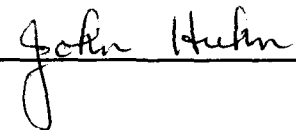
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Justin W. D'Atri, Esq.
Feldesman & D'Atri
122 East 42nd Street
New York, New York 10017
and by depositing same enclosed in a postpaid properly addressed 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

3rd day of October, 1977.







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

October 3, 1977

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

Mr. and Mrs. Max M. Miller
18 Strawberry Lane
Roslyn Heights, New York 11576

Dear Mr. and Mrs. Miller:

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 **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 Chyrywat
Joseph Chyrywat
Hearing Examiner

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
MAX M. MILLER and ETHEL MILLER : DECISION
for Redetermination of a Deficiency or :
for Refund of Personal Income Tax under :
Article 22 of the Tax Law for the Year :
1972. :

Petitioners, Max M. Miller and Ethel Miller, residing at 18 Strawberry Lane, Roslyn Heights, New York 11576, 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 1972. (File Nos. 12723 and 12724).

A small claims hearing was held before Joseph A. Milack, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 29, 1976 at 10:45 A.M. The petitioners appeared by Justin W. D'Atri, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Paul Rosenkranz, Esq., of counsel).

ISSUE

Whether petitioners paid in full a penalty equal to the total unpaid New York State withholding taxes due from Styles Unlimited Corp. for the year 1972, where said penalty was assessed against each petitioner, individually, pursuant to section 685(g) of the Tax Law.

FINDINGS OF FACT

1. Styles Unlimited Corp. failed to pay over New York State withholding taxes to the Income Tax Bureau in the sum of \$1,696.41, which amount was due for the six semi-monthly withholding periods from October 1, 1972 through December 31, 1972. Said corporation is presently insolvent.
2. During the year 1972, petitioners were officers of Styles Unlimited Corp.
3. On January 27, 1975, the Income Tax Bureau issued a Notice of Deficiency against petitioner Max M. Miller in the sum of \$1,696.41. This was a penalty equal to the total amount of unpaid New York State withholding taxes due from Styles Unlimited Corp. for the year 1972, pursuant to section 685(g) of the Tax Law.
4. On January 27, 1975, the Income Tax Bureau also issued a Notice of Deficiency against petitioner Ethel Miller, in the same amount and upon the same grounds as the aforesaid Notice of Deficiency issued against petitioner Max M. Miller.
5. Petitioners are not contesting the fact that they were persons required to collect, truthfully account for, and pay over New York State withholding taxes due from Styles Unlimited Corp. for the year 1972, or that they willfully failed to do so.

6. Prior to the issuance of the separate notices of deficiency, the petitioners jointly submitted payments of \$1,400.00 on behalf of Styles Unlimited Corp. On February 21, 1975, petitioners submitted another payment of \$200.00 on behalf of said corporation. On April 23, 1975, petitioners submitted an additional payment in the amount of \$96.41. The sum of these payments is \$1,696.41.

7. The Income Tax Bureau applied \$1,181.78 of the \$1,696.41 submitted against the withholding taxes due from Styles Unlimited Corp., and the remaining \$514.63 against the penalty and interest accrued on the assessments issued against the corporation. However, on October 12, 1976, the Income Tax Bureau notified the petitioners that a greater amount was due with respect to the corporate liability.

8. Petitioners contended that since they had made total payments in the sum of \$1,696.41, their liability for the unpaid New York State withholding taxes due from Styles Unlimited Corp. had been paid in full. They further contended that the Income Tax Bureau's attempts to collect additional amounts from them is unconstitutional.

CONCLUSIONS OF LAW

A. That upon the failure of Styles Unlimited Corp. to pay over New York State withholding taxes due in the sum of \$1,696.41 for the six semi-monthly withholding periods from October 1, 1972 through December 31, 1972, each of the petitioners became individually liable for a penalty of \$1,696.41 under section 685(g) of the Tax Law. Each of the petitioners was a responsible officer of Styles Unlimited Corp., and each willfully failed to collect or truthfully account for and pay over the withholding taxes due from the corporation.

B. That the individual liability of petitioner Max M. Miller, asserted under section 685(g) of the Tax Law in the amount of \$1,696.41, is to be reduced by \$848.21 of the jointly-submitted \$1,696.41 payment, leaving a balance due of \$848.20.

C. That the individual liability of petitioner Ethel Miller, asserted under section 685(g) of the Tax Law in the amount of \$1,696.41, is to be reduced by \$848.20 of the jointly-submitted \$1,696.41 payment, leaving a balance due of \$848.21.

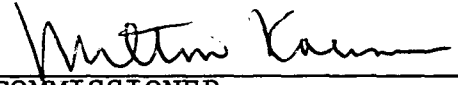
D. That the petition of Max M. Miller and Ethel Miller is granted to the extent indicated in Conclusions of Law "B" and "C"; that the respective notices of deficiency issued to each of the petitioners on January 27, 1975 are sustained to that extent, and that except as so modified, the petition of Max M. Miller and Ethel Miller is in all other respects denied.

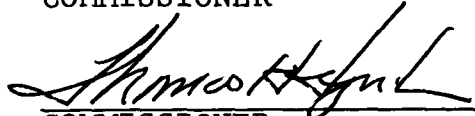
DATED: Albany, New York

October 3, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER