

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
SAUL WEISSMAN

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) XXXXXXXXXX (S)~~ :
1973.

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 22 day of August , 1977 , she served the within
Notice of Decision by (certified) mail upon Saul
Weissman ~~XXXXXXXXXXXXXXXXXXXX~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. Saul Weissman
15 South Lane
Levittown, New York 11756

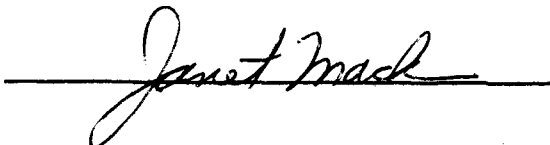
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the ~~XXXXXXXXXXXXXXXXXXXX~~
~~XXXXXXXX~~ petitioner herein and that the address set forth on said wrapper is the
last known address of the ~~XXXXXXXXXXXXXXXXXXXX~~ petitioner.

Sworn to before me this

22nd 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 22, 1977

Mr. Saul Weissman
15 South Lane
Levittown, New York 11756

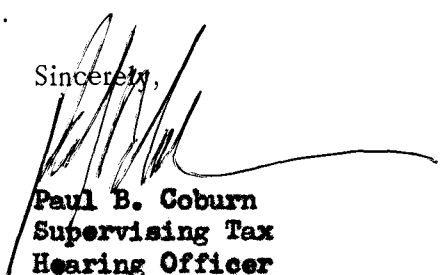
Dear Mr. Weissman:

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 ~~(X)~~ **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: ~~XXXXXXXXXXXXXXXXXXXX~~
~~Petitioner's Representative~~

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	DECISION
of	:	
	:	
SAUL WEISSMAN	:	
	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax	:	
under Article 22 of the Tax Law for the	:	
Year 1973.	:	

Petitioner, Saul Weissman, residing at 15 South Lane, Levittown, New York 11756, 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 1973. (File No. 11512).

A formal hearing was held before Solomon Sies, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 20, 1977 at 10:30 A.M.

The petitioner appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq. (Alexander Weiss, Esq., of counsel).

ISSUE

Whether petitioner, Saul Weissman an employee of Match-2, Inc., is liable for willful failure to pay over withholding taxes collected by said corporation pursuant to section 685(g) of the Tax Law.

FINDINGS OF FACT

1. On January 22, 1975, the Income Tax Bureau issued a Notice and Demand for Unpaid Withholding Tax Due addressed to Match-2, Inc., 240 West 40th Street, New York, New York, for the calendar year 1973 in the amount of \$6,099.79, with interest of \$574.34 and penalty of \$1,804.00, for a total of \$8,478.48. The full amount of withholding tax for 1973 was \$22,484.61 of which \$16,384.82 was previously paid.

2. On December 22, 1975, the Income Tax Bureau issued a Statement of Deficiency against the petitioner, Saul Weissman, as a person required to collect and pay over withholding tax due from Match-2, Inc. for the withholding tax period September 15, 1973 to December, 1973, in the amount of \$6,099.79 (as a penalty equal to the amount not paid over) for wilful failure to pay such tax. In accordance with the aforesaid Statement of Deficiency it issued a Notice of Deficiency in said amount.

3. In 1973 the petitioner, Saul Weissman, was employed by Match-2, Inc. as an office manager receiving a salary. At no time was he an officer of the corporation. He did not own any stock in the company nor did he have any financial interest in said corporation.

4. On January 17, 1974, the petitioner signed a reconciliation of personal income tax withheld on behalf of Match 2, Inc. for the year 1973, indicating total tax withheld during 1973 as shown on Forms IT-2102 (State withholding tax forms issued by employers to individual employees) and IT-2102P transmitted in the amount of \$22,484.61. Mr. Weissman signed this form as "controller".

5. The only officers of the corporation in 1973 were the principals, Sheldon Perr and Stanley Yagoda. One was president and the other was secretary-treasurer. Mr. Weissman signed checks after Mr. Yagoda left the corporation in 1974 or 1975, as an accommodation.

6. Mr. Weissman advised the principals and sole stockholders, Messrs. Perr and Yagoda to pay the withholding taxes. They advised him they would take care of it.

7. There was no duty on the part of Mr. Weissman to collect and pay over withholding taxes on behalf of Match 2, Inc. The payroll was prepared by an outside computer service. The corporation was engaged in the manufacture of sweaters.

CONCLUSIONS OF LAW

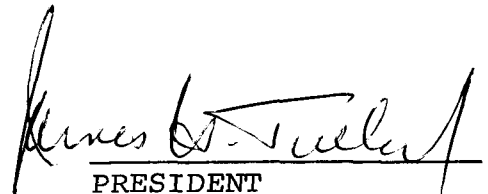
A. That petitioner, Saul Weissman was not a responsible person required to collect, account for and pay over the withholding taxes on behalf of Match 2, Inc. during the year 1973, within the intent and meaning of section 685 (n) of the Tax Law.

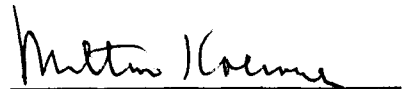
B. That the petitioner did not wilfully fail to collect, account for or pay over withholding taxes due from Match 2, Inc. in 1973 within the intent and meaning of section 685(g) of the Tax Law.

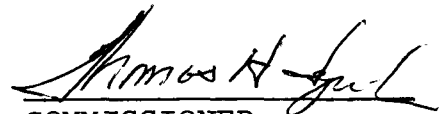
C. That the petition of Saul Weissman is granted and the Notice of Deficiency issued against him on December 22, 1975 be and the same is hereby cancelled.

DATED: Albany, New York
August 22, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER