

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

HERMAN RUBIN

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 ~~(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 1st day of September , 1978, ~~she~~ served the within
Notice of Decision by (certified) mail upon Herman Rubin

~~(representative of)~~ the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows:

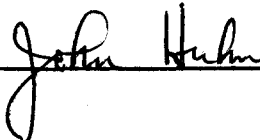
Mr. Herman Rubin
41-50 78th Street
Elmhurst, New York

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
1st day of September , 1978.





STATE OF NEW YORK
STATE TAX COMMISSION

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HERMAN RUBIN

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)~~ ~~xxx~~ ~~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 1st day of September, 1978, ~~she~~ served the within
Notice of Decision by (certified) mail upon Myron H. Finkelstein

(representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows:


Myron H. Finkelstein, CPA
225 West 34th Street
New York, New York 10001

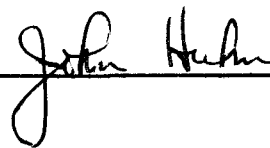
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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

1st day of September, 1978.







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

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

September 1, 1978

**Mr. Herman Rubin
41-50 78th Street
Elmhurst, New York**

Dear Mr. Rubin:

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 **(a) 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,

**Michael Alexander
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 :
HERMAN RUBIN : DECISION
for Redetermination of a Deficiency or :
for Refund of Personal Income Tax under :
Article 22 of the Tax Law for the Year :
1972. :

Petitioner, Herman Rubin, 41-50 78th Street, Elmhurst, New York, 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 No. 10204).

A formal hearing was held before Archibald F. Robertson, Jr., Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on December 1, 1976 at 2:45 P.M. Petitioner appeared by Myron H. Finkelstein, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (Richard Kaufman, esq., of counsel).

ISSUE

Whether petitioner was liable for a penalty under section 685(g) of the Tax Law with respect to unpaid withholding tax due from Dilberts Service, Inc. for the period January 1, 1972 through March 15, 1972.

FINDINGS OF FACT

1. Dilberts Service, Inc. failed to pay over to the Income Tax Bureau New York State withholding taxes deducted from the wages of its employees for the period January 1, 1972 through March 15, 1972 in the sum of \$9,193.66.

2. On September 29, 1975, the Income Tax Bureau issued a Statement of Deficiency against petitioner, Herman Rubin, asserting a penalty under section 685(g) of the Tax Law equal to the amount of New York State withholding taxes due from Dilberts Service, Inc. for the period January 1, 1972 through March 15, 1972. This Statement was issued on the grounds that petitioner was a person required to collect, truthfully account for and pay over said withholding taxes and that he willfully failed to do so. Accordingly, a Notice of Deficiency was issued against petitioner on September 29, 1975 in the amount of \$9,193.66.

3. Petitioner worked as the general manager of Dilberts Service, Inc. (hereinafter "Dilberts"), a subsidiary of Pan-Am Supermarkets, from December of 1969 to March of 1970 at a salary of \$20,000.00 a year. The business of Dilberts was running a chain of supermarkets.

4. As general manager petitioner supervised all the operations of Dilberts, since he had a background in supermarkets and, in fact, had at one time worked for Dilberts.

5. In March of 1970, the corporation went into bankruptcy. Petitioner was then appointed president of Dilberts and served continuously in that capacity until March 15, 1972, thus including the period in issue. Petitioner left the firm in May of 1972.

6. Upon his promotion, petitioner was given a raise in salary (from \$20,000.00 to \$25,000.00) and thereby became, with one other person, the highest-paid employee of the corporation.

7. The other highest-paid employee, a Mr. Rivling, managed the office functions of Dilberts, while petitioner continued to manage the general operations of the organization.

8. Petitioner was also a co-signatory on all checks issued by the corporation. As such, petitioner was aware that his refusal to sign a check would have prevented its successful issuance.

9. Petitioner had the power to hire, direct, or fire any other employee, with the possible exception of Mr. Rivling.

10. Petitioner made no attempt to either insure that withheld income tax was properly paid, or to supervise those employees charged with the function of so paying. Neither did he inquire of Mr. Rivling if the latter were attempting to insure such payment or to supervise those employees charged with the function of so paying.

CONCLUSIONS OF LAW

A. That petitioner, Herman Rubin, was a person required to collect, truthfully account for and pay over New York State withholding taxes due from Dilberts Service, Inc. for the period

January 1, 1972 through March 15, 1972, in accordance with the meaning and intent of section 685(n) of the Tax Law; that petitioner willfully failed or caused Dilberts Service, Inc. to willfully fail to collect, truthfully account for and pay over said withholding taxes; therefore, 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 Herman Rubin is denied and the Notice of Deficiency issued September 29, 1975 in the amount of \$9,193.66 is sustained.

DATED: Albany, New York
September 1, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER