

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

William F. Bott :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :

of a Determination or a Refund of

Personal Income Tax :

under Article 22 of the Tax Law

for the Years 1968, 1970 & 1971. :

State of New York

County of Albany

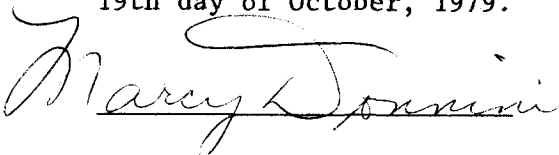
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 19th day of October, 1979, he served the within notice of Decision by certified mail upon William F. Bott, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

William F. Bott
Drinkwater Point
Yarmouth, ME 04906

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 petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
19th day of October, 1979.


Nancy L. Donini



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

October 19, 1979

William F. Bott
Drinkwater Point
Yarmouth, ME 04906

Dear Mr. Bott:

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(s) 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:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petitions	:	
	:	
of	:	
	:	
WILLIAM F. BOTT	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Years	:	
1968, 1970 and 1971.	:	

Petitioner, William F. Bott, Drinkwater Point, Yarmouth, Maine 04906, filed petitions for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1968, 1970 and 1971 (File No. 11505).

A formal hearing was held before Michael Alexander, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 4, 1977 at 10:45 A.M. Petitioner appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq. (Andrew Haber, Esq., of counsel).

ISSUE

Whether petitioner was subject to a penalty under section 685(g) of the Tax Law, as a person who willfully failed to collect, account for and pay over withholding taxes due from New Era Lithograph Company, Inc. and New Era Letter Company, Inc. for 1968, 1970 and 1971.

FINDINGS OF FACT

1. On November 25, 1974, the Income Tax Bureau issued a Notice of Deficiency to petitioner, William F. Bott, asserting deficiencies for 1968, 1970 and 1971 of \$4,557.25, \$30,648.00 and \$22,732.00, respectively, for a total of \$57,937.25. Attached thereto was a Statement of Deficiency regarding New Era Lithograph Co., Inc. It stated that available information indicated that petitioner was

liable to a penalty under section 685(g) of the Tax Law for 1968, for June 16 to December 31, 1970 and for January 1 to May 26, 1971, in the amounts stated in the Notice of Deficiency.

2. On November 25, 1974, the Income Tax Bureau issued another Notice of Deficiency to petitioner, William F. Bott, asserting deficiencies for 1968, 1970 and 1971 of \$12,320.15, \$33,250.00 and \$7,925.00, respectively, for a total of \$53,495.15. Attached thereto was a Statement of Deficiency regarding New Era Letter Company, Inc. It stated that available information indicated that petitioner was liable to a penalty under section 685(g) of the Tax Law for a 1968 balance due of \$10,302.67, an additional amount of \$2,017.48 for 1968, \$33,250.00 for September 15 to December 31, 1970 and \$7,925.00 for January 1 to January 25, 1971, for a total of \$53,495.15.

3. By memorandum dated January 25, 1977, the Income Tax Bureau advised the State Tax Commission that the 685(g) penalty asserted against petitioner regarding New Era Lithograph Co., Inc. should be reduced as follows: the 1970 deficiency of \$30,648.00 is reduced to \$24.48, and the 1971 deficiency of \$22,732.00 is reduced to zero. Subsequent to the hearing, the Income Tax Bureau notified the Commission that this liability had been fully satisfied and that the deficiency for New Era Lithograph Co., Inc. should be cancelled in full.

4. By concession of the representative of the Income Tax Bureau and based on information received from a bankruptcy referee, the deficiency asserted against New Era Letter Company, Inc. and the penalty asserted against petitioner is reduced to \$15,851.73 for 1968, 1970 and 1971. However, this figure is not broken down into amounts for periods or portions of periods.

5. Petitioner was the vice-president in charge of finance and controller of both New Era Lithograph Co., Inc. and New Era Letter Company, Inc. for the

period May 1, 1968 to May 15, 1969. In such capacity he supervised the drawing of paychecks for both corporations and his signature was required on such checks.

6. On May 15, 1969, petitioner became vice-president in charge of finance and treasurer of Computer Applications Incorporated, the parent of the two New Era corporations. This appointment required a physical move to a new location, and petitioner no longer had control over the two New Era corporate subsidiaries.

7. On June 16, 1970, petitioner was appointed president of New Era Letter Company, Inc. and affiliated companies, in which capacity he served until August 31, 1970. No evidence was proffered regarding his responsibilities in said capacity.

8. On September 8, 1970, petitioner was appointed vice-president in charge of finance and also treasurer of Hillcrest Foods, Inc., an unrelated corporation.

9. No withholding returns were offered in evidence, nor was any documentation offered to indicate whether certain returns were not filed or whether the payments made were less than the taxes due. Copies of work papers from Ernst & Ernst (the accountants for the two New Era corporations) indicate that, for the fiscal years ending September 30, 1968 and 1969, the two New Era corporations had fully paid the withholding tax due for 1968.

CONCLUSIONS OF LAW

A. That petitioner, William F. Bott, was a person required to collect, account for and pay over withholding tax due (as defined in section 685(n) of the Tax Law) from New Era Lithograph Company, Inc. and New Era Letter Company, Inc., for the periods May 1, 1968 to December 31, 1968 and June 16, 1970 to August 31, 1970.

B. That in accordance with Conclusion of Law "A", petitioner is not subject to the penalty imposed by section 685(g) of the Tax Law for unpaid taxes by New Era Letter Company, Inc., for the periods September 15 to December 31, 1970 or January 1 to January 25, 1971.

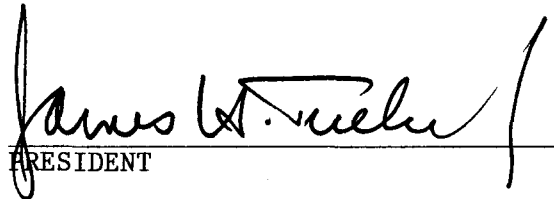
C. That the withholding taxes due from New Era Letter Company, Inc. for 1968 were paid in full; therefore, petitioner is not subject to penalty pursuant to section 685(g) of the Tax Law for that year.

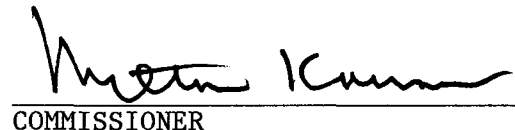
D. That the Notice of Deficiency regarding New Era Lithograph Company, Inc., is to be fully cancelled, based on Finding of Fact "3".

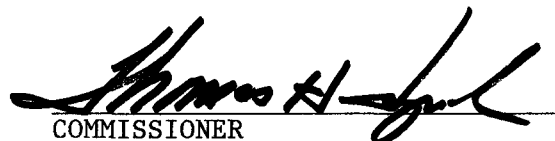
E. That the petitions of William F. Bott are granted and that the Notices of Deficiency issued on November 25, 1974 are cancelled.

DATED: Albany, New York
OCT 19 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER