

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
William Epstein :

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 Year 1966. :

State of New York
County of Albany

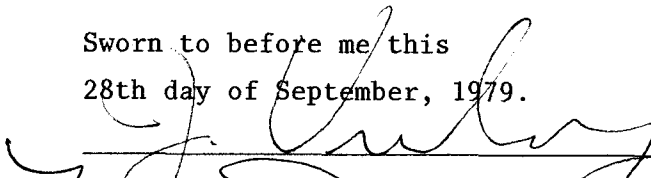
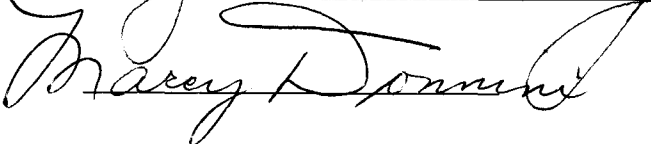
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 28th day of September, 1979, he served the within notice of Decision by certified mail upon William Epstein, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

William Epstein
66 Hickory Hill Dr.
Dobbs Ferry, NY

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
28th day of September, 1979.

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

William Epstein :

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 Year 1966. :

State of New York

County of Albany

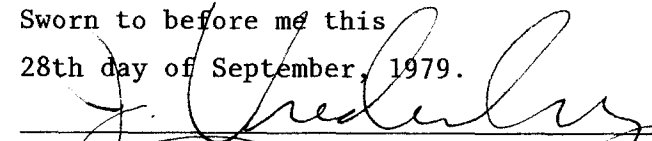
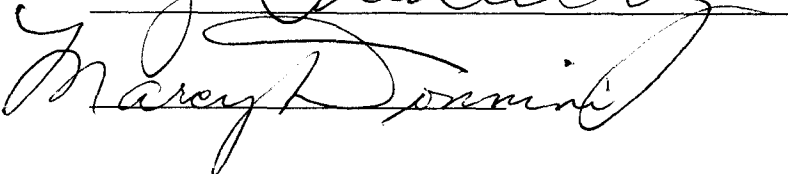
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 28th day of September, 1979, he served the within notice of Decision by certified mail upon Donald Steinberg the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. Donald Steinberg
200 Park Ave.
New York, NY 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
28th day of September, 1979.



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

STATE TAX COMMISSION

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

JOHN J. SOLLECITO
DIRECTOR

Telephone: (518) 457-1723

September 28, 1979

William Epstein
66 Hickory Hill Dr.
Dobbs Ferry, NY

Dear Mr. Epstein:

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 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,

A handwritten signature in cursive script, appearing to read "Robert H. Mullen".

cc: Petitioner's Representative
Donald Steinberg
200 Park Ave.
New York, NY 10017
Taxing Bureau's Representative

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
WILLIAM EPSTEIN : DECISION
for Redetermination of a Deficiency :
or for Refund of Personal Income Tax :
under Article 22 of the Tax Law for :
the Year 1966.

Petitioner, William Epstein, 66 Hickory Hill Drive, Dobbs Ferry, 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 1966 (File No. 13864).

A formal hearing was held before Harry Issler, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on November 16, 1977 at 2:45 P.M. Petitioner appeared by Donald Steinberg, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Alexander Weiss, Esq., of counsel).

ISSUE

Whether petitioner was a person required to collect, truthfully account for and pay over New York State withholding taxes of Gottfried Baking Co., Inc., who willfully failed to do so, thereby making him liable to a penalty under section 685(g) of the Tax Law.

FINDINGS OF FACT

1. On March 25, 1969, the Income Tax Bureau issued a Notice of Deficiency and a Statement of Deficiency against petitioner, William Epstein, which imposed a penalty equal to \$11,920.66 in New

York State withholding taxes due from Gottfried Baking Co., Inc. (hereafter "Gottfried") for 1966.

2. Gottfried failed to turn over \$11,920.66 in New York State income taxes withheld from its employees during 1966. The firm had been operating under Chapter XI of the Bankruptcy Act since November of 1965, and was declared bankrupt in November of 1966.

3. At the hearing, the Income Tax Bureau stipulated that the deficiency was to be reduced to \$6,498.01, which reflected the payment of a bankruptcy dividend.

4. Petitioner was an officer (vice-president) of Gottfried during the period at issue. Petitioner's duties were confined to sales and personnel matters, and he was not involved in the financial affairs of the corporation. Petitioner was neither a shareholder nor a director of the corporation. Although petitioner was an authorized cosignatory of the corporation's checks, he did so only at the request of the president or the comptroller of the corporation. He was not authorized to sign checks on the payroll account. Petitioner did not sign Gottfried's tax returns.

CONCLUSIONS OF LAW

A. That petitioner, William Epstein, was not a person required to collect, truthfully account for and pay over New York State withholding taxes due from Gottfried Baking Co., Inc., nor was he a person who willfully failed to do so, within the meaning of subsections (1) (now (n)) and (g) of section 685 of the Tax Law.

B. That the petition of William Epstein is granted and the penalty imposed under section 685(g) of the Tax Law is cancelled.

DATED: Albany, New York

SEP 28 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER