

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
JACK GOLDBERG

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 ~~(X)XXXXXX~~ 1973. :

State of New York
County of Albany

John Huhn , 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 4th day of May , 19 79, he served the within
Notice of Decision by (certified) mail upon Jack Goldberg
~~XXXXXXXXXXXXXXXX~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Jack Goldberg
9 Tornill Rd.
West Orange, NJ 07052

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

Sworn to before me this

4th day of May , 1979.

Marilyn J. Papineau

John Huhn

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
JACK GOLDBERG

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article ~~(8)~~ 22 of the :
Tax Law for the Year ~~(8)XXXXXX(8)XX~~ 1973. :

State of New York
County of Albany

John Huhn , 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 4th day of May , 19 79, he served the within
Notice of Decision by (certified) mail upon Oscar Goldberg
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Oscar Goldberg
75 Maiden Lane
New York, NY 10038

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

4th day of May , 1979.

Marilyn J. Papineau

John Huhn



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

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

May 4, 1979

Jack Goldberg
9 Tornill Rd.
West Orange, NJ 07052

Dear Mr. Goldberg:

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,

JOSEPH CHYRMAK
HEARING EXAMINER

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK
STATE TAX COMMISSION

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

Petitioner, Jack Goldberg, 9 Tornill Road, West Orange, New Jersey 07052, 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. 11615).

A small claims hearing was held before William Valcarcel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on March 6, 1978 at 10:45 A.M. Petitioner appeared with Oscar Goldberg, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Frank Levitt, Esq., of counsel).

ISSUE

Whether petitioner was a person required to collect, truthfully account for and pay over New York State withholding taxes of Lane Wines and Liquors, Inc. for the period April 1, 1973 through September 10, 1973.

FINDINGS OF FACT

1. On August 26, 1974, the Income Tax Bureau issued a Notice of Deficiency to petitioner, asserting penalty pursuant to section 685(g) of the Tax Law. Said Notice was issued against petitioner, Jack Goldberg, as a person who willfully failed to collect and pay over personal income taxes withheld by Lane Wines and Liquors, Inc. of \$575.00.

2. Petitioner was a corporate officer and minority stockholder of Lane Wines and Liquors, Inc. He contended that his sole function was to appear once a week to co-sign corporate checks.

3. Funds which were available during 1973 were used to pay liquor distributors, so that the corporation could continue in business. Corporate checks were signed by petitioner to pay liquor distributors and "day-to-day" expenses.

4. Petitioner maintained that he was a full-time employee of another business in which he maintained an investment interest.

5. Petitioner was uncertain and vague as to his actions during 1973 and as to his knowledge of the facts regarding Lane Wines and Liquors, Inc.

6. At a conference, it was determined that the actual amount due in withholding taxes from Lane Wines and Liquors, Inc. for the period April 1, 1973 through September 10, 1973 was \$563.00.

CONCLUSIONS OF LAW

A. That petitioner, Jack Goldberg, was a person required to collect, truthfully account for and pay over New York State withholding taxes due from Lane Wine and Liquors, Inc. during the period April 1, 1973 through September 10, 1973, within the meaning and intent of subsection (g) and (n) of section 685 of the Tax Law, and that he willfully failed to do so. Accordingly, petitioner is subject to the penalty.

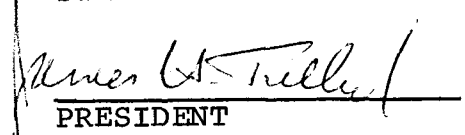
B. That the petition of Jack Goldberg is granted to the extent that the penalty imposed against him be reduced from \$575.00 to \$563.00.

C. That the Income Tax Bureau is hereby directed to accordingly modify the Notice of Deficiency issued August 26, 1974 and that, except as so granted, the petition is in all other respects denied.

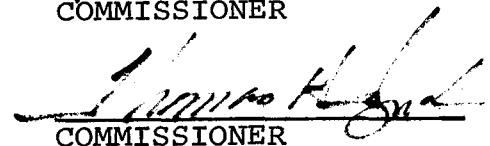
DATED: Albany, New York

May 4, 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER