

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Bernard Nathan :  
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 1971. :

AFFIDAVIT OF MAILING

State of New York  
County of Albany

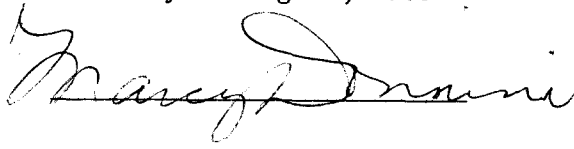

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 31st day of August, 1979, he served the within notice of Decision by certified mail upon Bernard Nathan, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Bernard Nathan  
180 West End Ave.  
New York, NY 10023

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  
31st day of August, 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

August 31, 1979

Bernard Nathan  
180 West End Ave.  
New York, NY 10023

Dear Mr. Nathan:

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 "Joel Chagny".

cc: Petitioner's Representative  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
BERNARD NATHAN : DECISION  
for Redetermination of a Deficiency or for :  
Refund of Personal Income Tax under :  
Article 22 of the Tax Law for the Year 1971. :

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Petitioner, Bernard Nathan, 180 West End Avenue (Apt. 2-S), New York, New York 10023, 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 1971 (File No. 13900).

A small claims hearing was held before Harry Huebsch, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on November 28, 1978 at 2:45 P.M. Petitioner appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq. (Bruce Zalaman, Esq., of counsel).

ISSUE

Whether petitioner was liable for the penalty imposed against him under section 685(g) of the Tax Law, with respect to unpaid New York State withholding taxes due from Admiral Chauffeurs, Inc. for 1971.

FINDINGS OF FACT

1. Admiral Chauffeurs, Inc. ("Admiral") failed to pay over to the Income Tax Bureau \$2,288.14 in New York State personal income taxes withheld from its employees during 1971.

2. On July 29, 1974, the Income Tax Bureau issued a Statement of Deficiency and a Notice of Deficiency against petitioner, Bernard Nathan, for a penalty equal to the amount of New York State withholding tax due from Admiral Chauffeurs, Inc. for 1971. The deficiency was based on the contention that petitioner was a person required to collect, truthfully account for and pay over said tax, and that he willfully failed to do so.

3. Petitioner contended that the only service he performed for Admiral was as a dispatcher of chauffeurs, and that he did not involve himself in the financial affairs of the corporation. He contended further that he did not know that withholding taxes were not paid over to the Income Tax Bureau during the year at issue.

4. Petitioner was president of Admiral and was so listed on its New York State Corporation Franchise Tax Report (Form CT-4). He owned one-third of Admiral's stock. He could hire employees and had the authority to sign checks in payment of creditors, which he did on several occasions.

CONCLUSIONS OF LAW

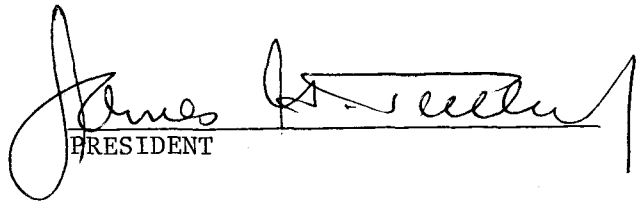
A. That petitioner, Bernard Nathan, was a person required to collect, truthfully account for and pay over New York State withholding taxes due from Admiral Chauffeurs, Inc. for 1971, within the meaning and intent of section 685(n) of the Tax Law. Since petitioner willfully failed or caused Admiral Chauffeurs, Inc. to willfully fail to collect, truthfully account for and pay over New York State withholding tax due from said corporation, a penalty equal to the total amount of unpaid withholding tax was properly imposed against him under section 685(g) of the Tax Law.

B. That the petition of Bernard Nathan is denied and the Notice of Deficiency issued on July 29, 1974 for \$2,288.14 is sustained.

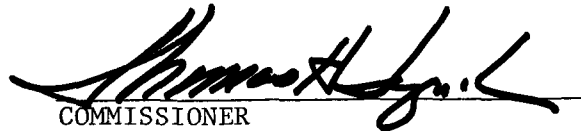
DATED: Albany, New York

STATE TAX COMMISSION

AUG 31 1979

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER