

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Nickie Van Winkle :

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 1969 - 1970. :

State of New York

County of Albany

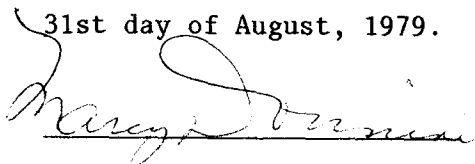
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 31st day of August, 1979, he served the within notice of Decision by certified mail upon Nickie Van Winkle, the petitioner in the within proceeding,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

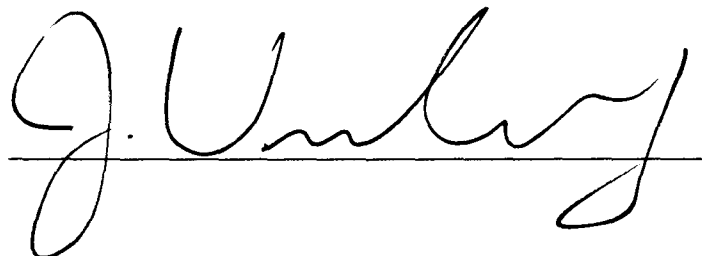
Nickie Van Winkle
430 E. 63rd St.
New York, NY 10021

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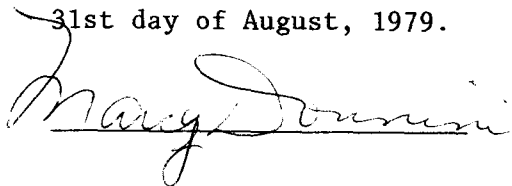
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 31st day of August, 1979, he served the within notice of Decision by certified mail upon Robert S. Lusthaus the representative of the petitioner in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

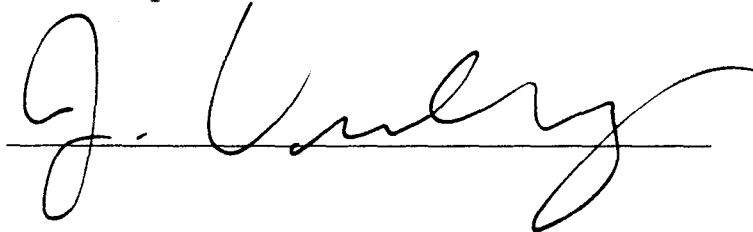
Mr. Robert S. Lusthaus
6 Westchester Ave.
Jericho, NY 11753

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
31st day of August, 1979.


Mary Dominici


J. Vredenburg



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

Nickie Van Winkle
430 E. 63rd St.
New York, NY 10021

Dear Mr. Van Winkle:

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) 1138 & 1243 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,

Robert Mulligan
Ug

cc: Petitioner's Representative
Robert S. Lusthaus
6 Westchester Ave.
Jericho, NY 11753
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
NICKIE VAN WINKLE	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Years	:	
1969 and 1970.	:	
	:	

Petitioner, Nickie Van Winkle, 430 East 63rd Street, New York, New York 10021, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1969 and 1970 (File No. 13915).

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 July 11, 1977 at 2:45 P.M. Petitioner appeared by Robert S. Lusthaus, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Laurence Stevens, Esq., of counsel).

ISSUE

Whether petitioner is liable to a penalty under section 685(g) of the Tax Law for willfully failing to collect, truthfully account for and pay over withholding taxes due from Staging Scenic Studios, Inc. for the period January 1, 1969 to March 31, 1970.

FINDINGS OF FACT

1. On April 10, 1972, the Income Tax Bureau issued a Notice of Deficiency and Statement of Deficiency to petitioner, asserting a penalty pursuant to section 685(g) of the Tax Law. Said notices were issued for willful failure to pay over the tax imposed by Article 22, which tax was to be withheld and paid over by Staging Scenic Studios, Inc. The amount of penalty asserted was \$12,211.77, \$9,211.42 of which was for the withholding tax period January 1, 1969 to October 31, 1969, while \$3,000.35 of it was for the withholding tax period January 1, 1970 to March 31, 1970.

2. The predecessor to Staging Scenic Studios, Inc. was City Scenic Studios, which went into bankruptcy. Both businesses were controlled by petitioner's husband at that time, Arthur Eichner. Petitioner and Eichner were subsequently divorced.

3. In 1966 petitioner was employed as a secretary, typist, bookkeeper and general office manager, without any corporate title.

4. After the failure of City Scenic Studios, it was thought to be desirable not to have Arthur Eichner listed as an officer of Staging Scenic Studios, Inc. Consequently, the officers of the corporation were Adolph Solomon (since deceased), an uncle of Arthur Eichner, who served as president and petitioner, who served as secretary. Either of these officers were authorized

to deposit or withdraw money from Franklin National Bank, where the corporation had its account pursuant to corporate resolutions dated August 21, 1968. Another such resolution dated November 6, 1969 with that bank listed the secretary of the corporation as one Jim Masters. Neither petitioner nor the corporation's production manager knew an individual by that name.

5. Petitioner owned no shares in Staging Scenic Studios, Inc.

6. Although empowered to sign checks, petitioner never drafted a check without the authorization of Arthur Eichner (then her husband), who controlled the operation of the corporation and was present on a daily basis. Petitioner feared her husband, whom she claimed was a violent man.

7. During the period in issue, Staging Scenic Studios, Inc. employed between 20 and 65 employees. The employees were paid in cash. After computing the amount to be withheld from each employee and pursuant to instructions from her husband, petitioner would draft a check to payroll, placing the net salaries in envelopes for payment to the employees. All bills for either lumber or from suppliers had to be paid in cash.

8. Petitioner kept records of the withholding from salary but no special account for such withholding was maintained, due to lack of funds. Petitioner also prepared tax returns for the

corporation which were checked by an accountant. Both petitioner and the accountant advised Mr. Eichner of the amount due New York State. The latter's attitude was that the corporation would catch up when business got better.

CONCLUSIONS OF LAW

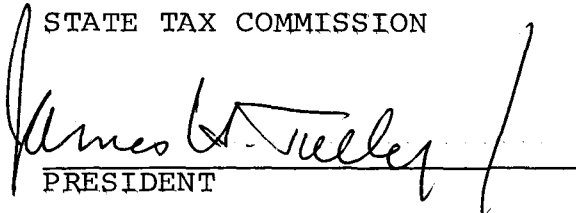
A. That petitioner, Nickie Van Winkle, was not a person required to collect, truthfully account for and pay over New York State withholding taxes due from Staging Scenic Studios, Inc. for the years 1969 and 1970 and who willfully failed to do so within the meaning and intent of subsections (n) and (g) of section 685 of the Tax Law. Accordingly, the penalty equal to the amount of unpaid withholding taxes due from said corporation should not have been asserted against her under subsection (g) of section 685 of the Tax Law.

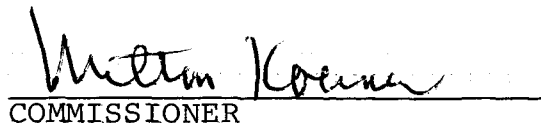
B. That the petition of Nickie Van Winkle is granted and the Notice of Deficiency issued April 10, 1972 is cancelled.

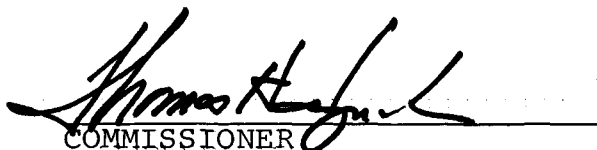
DATED: Albany, New York

AUG 31 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER