

STATE OF NEW YORK
STATE TAX COMMISSION

_____ :
In the Matter of the Petition :
of :
Gerald Auerbach :
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 1970. :
_____ :

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 7th day of July, 1980, he served the within notice of Decision by certified mail upon Gerald Auerbach, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Gerald Auerbach
23 Maple Lane
Essex Falls, NJ 07021

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
7th day of July, 1980.

Rector A Bank

J. J. Kelly

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

July 7, 1980

Gerald Auerbach
23 Maple Lane
Essex Falls, NJ 07021

Dear Mr. Auerbach:

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 :
GERALD AUERBACH and NATHAN ZUCKER : DECISION
for Redetermination of a Deficiency or for :
Refund of Personal Income Tax under Article :
22 of the Tax Law for the Year 1970. :

Petitioners, Gerald Auerbach of 23 Maple Lane, Essex Falls, New Jersey 07021 and Nathan Zucker c/o D.F.I. Communications, Inc., 888 Seventh Avenue, New York, New York, filed petitions for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1970 (File Nos. 12795 and 12794).

A formal hearing was held before Edward L. Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on September 27, 1977, at 9:15 A.M. Petitioner Gerald Auerbach appeared pro se. Petitioner Nathan Zucker appeared by Williamson & Schoeman (Michael E. Schoeman, Esq., of counsel). The Audit Division appeared by Peter Crotty, Esq. (William Fox, Esq., of counsel).

ISSUES

I. Whether notices of deficiency asserted against each petitioner individually were issued within the statute of limitations for assessment.

II. Whether petitioners were responsible persons required to collect, truthfully account for and pay over New York State withholding taxes of Action Talents, Inc. for the year 1970.

FINDINGS OF FACT

1. On January 31, 1971, a Form IT-2103, Reconciliation of Personal Income Tax Withheld for the calendar year 1970, was filed with the Income Tax Bureau by Action Talents, Inc. showing income tax having been collected in 1970 amounting to \$3,985.66. The form was signed by an illegible scrawl, denominated "Acct." The employer's account number was 13-2560581.

2. On July 29, 1974, the Income Tax Bureau issued notices of deficiency to petitioner Gerald Auerbach and petitioner Nathan Zucker, each in the amount of \$3,985.66. Attached to each was a Statement of Deficiency indicating that the sum said to be due was a penalty for violation of section 685(g) of the Tax Law relating to withholding taxes for the year 1970. The employer's account number was given as 13-2560581.

3. On October 17, 1974, petitioners, Gerald Auerbach and Nathan Zucker, each filed a petition for redetermination of the deficiency. Each petition contained a sworn statement that petitioner was not an officer, director or shareholder of Action Talents, Inc. Each petition raised the defense of the three year statute of limitations.

4. No documentary or other satisfactory evidence was submitted to show that Forms IT-2101 were filed for the year 1970. A Notice and Demand for Unpaid Withholding Tax Due was issued against Action Talents, Inc. by the Income Tax Bureau from the information reported on Form IT-2103 (Reconciliation of New York State Personal Income Tax Withheld) filed by it for said year.

CONCLUSIONS OF LAW

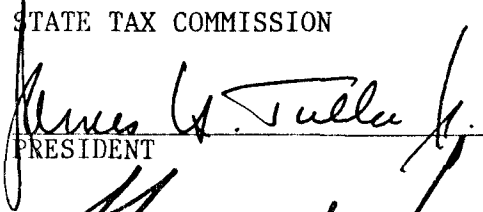
A. That since withholding tax returns (Form IT-2101) were not filed by Action Talents, Inc. for the year 1970, the statute of limitations for assessment had not expired for this year, in accordance with the meaning and intent of section 683(c)(1)(A) of the Tax Law.


B. That petitioners, Gerald Auerbach and Nathan Zucker, have failed to sustain the burden of proof imposed by section 689(e) of the Tax Law to show that they were not persons required to collect, truthfully account for and pay over New York State withholding taxes due from Action Talents, Inc. for the year 1970 within the meaning and intent of sections 685(g) and (n) of the Tax Law.

C. That the petitions of Gerald Auerbach and Nathan Zucker are denied and the notices of deficiency dated July 29, 1974 are sustained.

DATED: Albany, New York
JUL 07 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER