

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of

Leonard Belvedere :

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 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 5th day of September, 1980, he served the within notice of Decision by certified mail upon Leonard Belvedere, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Leonard Belvedere
2750 Johnson Ave.
Bronx, NY 10463

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
5th day of September, 1980.

Debbie Bank

J. Vredenburg

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

September 5, 1980

Leonard Belvedere
2750 Johnson Ave.
Bronx, NY 10463

Dear Mr. Belvedere:

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 Petition :
of :
LEONARD BELVEDERE : DECISION
for Redetermination of a Deficiency or for :
Refund of Personal Income Tax under Article 22 :
of the Tax Law for the Year 1970. :

Petitioner, Leonard Belvedere, 2750 Johnson Avenue, Bronx, New York 10463, 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 1970 (File No. 15457).

A small claims hearing was held before Samuel Levy, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on March 14, 1980 at 9:15 A.M. Petitioner appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (William Fox, Esq., of counsel).

ISSUE

Whether petitioner is subject to a penalty pursuant to section 685(g) of the Tax Law as a person required to collect, truthfully account for, and pay over withholding taxes due and owing from Transworld Fruit Import Corporation for 1970.

FINDINGS OF FACT

1. Under date of April 12, 1976, the Audit Division issued a Statement of Deficiency against petitioner, Leonard Belvedere, imposing a penalty equal to the total amount of unpaid withholding taxes due from Transworld Fruit

Import Corporation for 1970. Said statement was issued on the grounds that petitioner was a person required to collect, truthfully account for, and pay over said taxes and that he willfully failed to do so. Accordingly, on April 12, 1976, the Audit Division issued a Notice of Deficiency against petitioner for \$696.40.

2. Petitioner was the vice-president and a twenty-five (25) percent shareholder of Transworld Fruit Import Corporation (hereinafter corporation) for the period at issue.

3. Petitioner contended that his principal duties for said corporation were to sell its product and make daily bank deposits. He contended that he did not prepare or assist in the preparation of tax returns and only occasionally prepared checks. The former function was the duty of the accountant retained by the corporation. The latter service was generally performed by his brother, Michael Belevedere, who was the corporate president and also a twenty-five (25) percent shareholder.

4. Petitioner was an authorized signatory of the corporation's checking account. In the absence of Michael Belevedere, petitioner was responsible for issuing checks to creditors.

5. Petitioner contended that the corporation was "sold" by creditors either in 1971 or 1972 for \$25,000.00. That said monies were paid over for the benefit of creditors, with priority to be given for unpaid Federal and state withholding taxes. Therefore, petitioner argued since the monies were available for unpaid withholding taxes, the State of New York should pursue creditors who liquidated the corporation, and not him.

6. In addition, petitioner contended that he did not receive an "answer" to his perfected petition.

7. Said answer to petitioner's perfected petition was issued on May 4, 1978 by regular mail and was not returned by the U.S. postal service.

CONCLUSIONS OF LAW

A. That petitioner, Leonard Belevedere, has failed to sustain the burden of proof provisions of the Tax Law imposed by section 689(e) to show that he was not a person required to collect, truthfully account for, and pay over to New York State withholding taxes due and owing from Transworld Fruit Import Corporation for 1970, in accordance with the meaning and intent of section 685, subsections (g) and (n) of the Tax Law. That his failure to do so was willful.

B. That the "answer" mailed in response to the petition was not returned by the United States Postal Service. That a letter mailed and not returned by the United States Postal Service is presumed to have been received by addressee. Therefore, petitioner had notice of the position adopted by the Audit Division.

C. That the petition of Leonard Belevedere is denied and the Notice of Deficiency issued on April 12, 1976 is sustained.

DATED: Albany, New York

SEP 05 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER