

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :

of

Robert Curtin :

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 1970 & 1971. :

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 4th day of April, 1980, he served the within notice of Decision by certified mail upon Robert Curtin, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Robert Curtin  
P.O. Box 736  
Syosset, NY 11791

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  
4th day of April, 1980.

Jeanne Krapp

J. Vredenburg

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

April 4, 1980

Robert Curtin  
P.O. Box 736  
Syosset, NY 11791

Dear Mr. Curtin:

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

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In the Matter of the Petition	:	
of	:	
ROBERT CURTIN	:	DECISION
for Redetermination of Deficiencies or for	:	
Refund of Personal Income Tax under Article	:	
22 of the Tax Law for the Years 1970 and 1971.	:	

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Petitioner, Robert Curtin, P.O. Box 736, Syosset, New York 11791, filed a petition for redetermination of deficiencies or for refund of personal income tax under Article 22 of the Tax Law for the years 1970 and 1971 (File No. 13952).

A small claims hearing was held before Allen Caplowaith, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on September 18, 1979 at 1:15 P.M. Petitioner appeared (pro se). The Audit Division appeared by Ralph Vecchio, Esq. (Irwin Levy, Esq., of counsel).

#### ISSUE

Whether petitioner, Robert Curtin, is liable for the penalty imposed against him pursuant to section 685(g) of the Tax Law, with respect to unpaid New York State withholding taxes due from Baron Personnel Association, Inc. during 1970 and 1971.

FINDINGS OF FACT

1. On October 30, 1972 the Income Tax Bureau issued a Statement of Deficiency and a Notice of Deficiency, wherein a penalty was imposed against petitioner under section 685(g) of the Tax Law for failure to collect, truthfully account for, and pay over the New York State withholding taxes of Baron Personnel Association, Inc. (hereinafter Baron), 14 Maidenlane, New York, New York 10038. The penalty, which is equal to the total amount of the tax evaded, not collected, or not accounted for and paid over, was computed for the periods as follows:

<u>Withholding Tax Period</u>	<u>Amount</u>
October 1 to December 31, 1970	\$ 1,019.30
April 1 to September 30, 1970	969.40
January 1 to March 31, 1971	244.00
Total Due	<u>\$ 2,232.70</u>

2. On July 29, 1974, the Income Tax Bureau issued a Statement of Deficiency and a Notice of Deficiency, imposing a penalty against petitioner under section 685(g) of the Tax Law for failure to collect, truthfully account for and pay over New York State withholding taxes of Baron, for the period January 1, through March 31, 1971, in the amount of \$201.50.

3. The above stated penalties were asserted against petitioner based on information received from the Corporation Tax Bureau, which indicated that he had held the position of treasurer with Baron during 1969.

4. Petitioner testified that he was an employee and officer of Baron from the end of 1968 through sometime in late 1969. He further testified that he was not an employee, officer or director, or affiliated with Baron in any manner during the delinquent periods at issue; and therefore, is not liable for the penalties imposed against him.

5. Petitioner was a full time licensed representative of the Massachusetts Mutual Life Insurance Company during the entire period at issue. This is evidenced by copies of his Federal tax returns and accompanying forms 1099 for 1970 and 1971.

CONCLUSIONS OF LAW

A. That petitioner, Robert Curtin, was not a person, as defined in section 685(n) of the Tax Law, required to collect, truthfully account for, and pay over the withholding taxes of Baron Personnel Association, Inc., during 1970 and 1971, within the meaning and intent of section 685(g) of the Tax Law.

B. That the petition of Robert Curtin is granted and the notices of deficiency dated October 30, 1972 and July 29, 1974 are cancelled.

DATED: Albany, New York

APR 4 1980

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER