

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Russell E. Duvernoy :

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 1974. :

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 17th day of October, 1980, he served the within notice of Decision by certified mail upon Russell E. Duvernoy, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

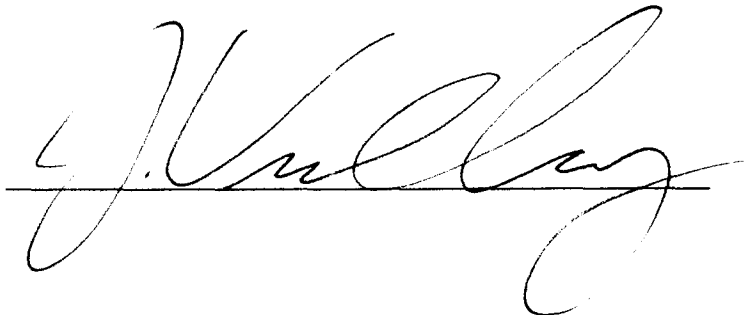
Russell E. Duvernoy
Route 25-A
Syosset, NY 11791

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
17th day of October, 1980.

Dorothy A. Bank



STATE OF NEW YORK
STATE TAX COMMISSION

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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 17th day of October, 1980, he served the within notice of Decision by certified mail upon Elliot L. Krause 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. Elliot L. Krause
10 East 40th St.
New York, NY 10006

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
17th day of October, 1980.

Deborah A Bank

J. Vredenburg

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

October 17, 1980

Russell E. Duvernoy
Route 25-A
Syosset, NY 11791

Dear Mr. Duvernoy:

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
Elliot L. Krause
10 East 40th St.
New York, NY 10006
Taxing Bureau's Representative

STATE TAX COMMISSION

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on December 11, 1978 at 10:45 A.M. Petitioner appeared by Elliot L. Krause, Esq. The Audit Division appeared by Peter Crotty, Esq. (Paul Lefebvre, Esq., of counsel).

ISSUE

Whether petitioner was a person required to collect, truthfully account for and pay over withholding taxes due from Duvernoy Westchester Corp., Duvernoy Bakeries, Inc. and Duvernoy & Sons, Inc. for the period July 16, 1974 to September 25, 1974 within the meaning and intent of section 685(g) of the Tax Law.

FINDINGS OF FACT

1. Duvernoy Westchester Corp. failed to pay over to the New York State Income Tax Bureau, personal income taxes withheld from its employees' wages for the period July 16, 1974 through September 25, 1974 totaling \$10,026.76.

2. On January 24, 1977, the Income Tax Bureau issued a Statement of Deficiency against petitioner, Russell E. Duvernoy imposing a penalty equal to the amount of New York State withholding taxes due from Duvernoy Westchester Corp. for the period July 16, 1974 through September 25, 1974. This was done on the grounds that he was a person required to collect, truthfully account for and pay over said taxes and that he willfully failed to do so. Accordingly, the Notice of Deficiency for \$10,026.76 and dated January 24, 1977 was issued against petitioner. A remittance of \$4,401.32 was received as final bankruptcy dividend for Duvernoy Westchester Corp. on October 18, 1978.

3. Duvernoy Bakeries, Inc. failed to pay over to the New York State Income Tax Bureau, personal income taxes withheld from its employees' wages for the period July 16, 1974 through September 25, 1974 totaling \$13,546.00.

4. On January 24, 1977, the Income Tax Bureau issued a Statement of Deficiency against petitioner Russell E. Duvernoy, imposing a penalty equal to the amount of New York State withholding taxes due from Duvernoy Bakeries, Inc. for the period July 16, 1974 through September 25, 1974. This was done on the grounds that he was a person required to collect, truthfully account for and pay over said taxes and that he willfully failed to do so. Accordingly, a Notice of Deficiency for \$13,546.00 and dated January 24, 1977 was issued against petitioner. A remittance of \$5,946.09 was received as final bankruptcy dividend from Duvernoy Bakeries Inc. on October 18, 1978.

5. Duvernoy & Sons, Inc. failed to pay over to the New York State Income Tax Bureau, personal income taxes withheld from its employees' wages for the period July 16, 1974 through September 25, 1974 totaling \$1,716.55.

6. On February 28, 1977 the Income Tax Bureau issued a Statement of Deficiency against petitioner, Russell E. Duvernoy, imposing a penalty equal

to the amount of New York State withholding taxes due from Duvernoy & Sons, Inc. for the period July 16, 1974 through September 25, 1974. This was done on the grounds that he was a person required to collect, truthfully account for and pay over said taxes and that he willfully failed to do so. Accordingly, a Notice of Deficiency for \$1,716.55 and dated February 28, 1977 was issued against petitioner. A remittance in the amount of \$753.53 was received as final bankruptcy dividend from Duvernoy & Sons, Inc. on October 18, 1978.

7. In 1959, Russell E. Duvernoy became president of Duvernoy Westchester Corp., Duvernoy Bakeries, Inc. and Duvernoy & Sons, Inc. Petitions were filed in bankruptcy to perfect arrangements on September 28, 1974 for all the companies. All were adjudicated bankrupt. Tom McNamara was the vice president and Harold Sachs was the secretary-treasurer of the companies. Russell E. Duvernoy signed the corporate tax returns for 1974. His duties were to take care of sales administration and production and generally he had to oversee the whole operation. He was a major stockholder. His signature, together with the secretary-treasurer was required on company checks. Payroll checks required only the secretary-treasurer.

CONCLUSIONS OF LAW

A. That Duvernoy Westchester Corp., Duvernoy Bakeries, Inc. and Duvernoy & Sons, Inc. were employers required to deduct withholding taxes due from its employees' wages for the period July 16, 1974 through September 25, 1974 within the meaning and intent of section 671 of the Tax Law.

B. That petitioner, Russell E. Duvernoy knew or should have known, that Duvernoy Westchester Corp., Duvernoy Bakeries, Inc. and Duvernoy & Sons, Inc. failed to pay to the Income Tax Bureau the taxes withheld for the period July 16, 1974 through September 25, 1974 which taxes constitute trust funds pursuant to section 675 of the Tax Law.

C. That petitioner Russell E. Duvernoy, was a person required to collect, truthfully account for and pay over the withholding taxes due from Duvernoy Westchester Corp., Duvernoy Bakeries, Inc. and Duvernoy & Sons, Inc., within the meaning and intent of section 685(n) of the Tax Law.

D. That petitioner, Russell E. Duvernoy, willfully failed to collect, truthfully account for and pay over the taxes withheld by Duvernoy Westchester, Inc., Duvernoy Bakeries, Inc. and Duvernoy & Sons, Inc. during the period July 16, 1974 through September 25, 1974 within the meaning and intent of section 685(g) of the Tax Law. [Levin v. Gallman, 42 N.Y. 2d 32, 396 N.Y.S. 2d 623 (1977)].

That the Audit Division is instructed to modify the Notices of Deficiency issued on January 24, 1977 and the Notice of Deficiency issued February 28, 1977 against Russell E. Duvernoy in accordance with the remittances received as final bankruptcy dividends from the adjudicated bankrupt companies, and that except as so modified the Notices are otherwise sustained; that the petitions of Russell E. Duvernoy are in all other respects denied.

DATED: Albany, New York

STATE TAX COMMISSION

OCT 17 1980

*Abstain
Russ E. Duvernoy*

PRESIDENT

[Signature]
COMMISSIONER

[Signature]
COMMISSIONER