

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Roger Fischer :  
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 1972. :  
\_\_\_\_\_

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 16th day of May, 1980, he served the within notice of Decision by certified mail upon Roger Fischer, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Roger Fischer  
56-14 Seabury St.  
Elmhurst, NY 11373

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  
16th day of May, 1980.

Joanne Knapp

J. Vredenburg

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Roger Fischer :  
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 1972. :

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 16th day of May, 1980, he served the within notice of Decision by certified mail upon Pearl Kisner the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

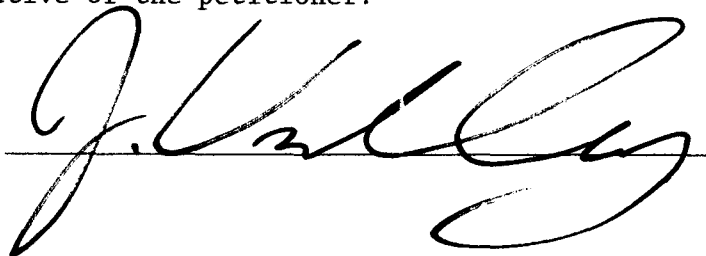
Mr. Pearl Kisner  
Trubin, Sillcocks, Edelman & Knapp  
375 Park Ave.  
New York, NY 10022

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  
16th day of May, 1980.

Joanne Knapp



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

May 16, 1980

Roger Fischer  
56-14 Seabury St.  
Elmhurst, NY 11373

Dear Mr. Fischer:

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  
Pearl Kisner  
Trubin, Sillcocks, Edelman & Knapp  
375 Park Ave.  
New York, NY 10022  
Taxing Bureau's Representative

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
ROGER FISCHER : DECISION  
for Redetermination of a Deficiency or :  
for Refund of Personal Income Tax under :  
Article 22 of the Tax Law for the Year :  
1972. :

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Petitioner, Roger Fischer, 56-14 Seabury Street, Elmhurst, New York 11373, 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 1972 (File No. 10194).

On September 18, 1979, the State Tax Commission was advised that petitioner desired to waive a hearing and to submit the case to the State Tax Commission, based on the entire record contained in the file and based on sworn testimony rendered at a small claims hearing held before William Valcarcel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on April 27, 1979.

ISSUE

Whether petitioner is liable for a penalty equal to the total unpaid New York State withholding taxes due from E.S.E. Stock Transfer Corporation.

FINDINGS OF FACT

1. A Reconciliation of Personal Income Tax Withheld was filed by the E.S.E. Stock Transfer Corporation (Stock Transfer) for the year 1972. The aforementioned form indicated that \$1,996.07 was withheld from employees and that \$1,174.05 of that amount withheld was turned over to the Income Tax Bureau.

2. On September 29, 1975, the Income Tax Bureau issued a Notice of Deficiency for \$822.02, along with an explanatory Statement of Deficiency, on which a penalty pursuant to section 685(g) of the Tax Law was imposed against petitioner, Roger Fischer.

3. Petitioner, Roger Fischer, was retained in 1962 as executive vice-president of Electronic Stock Evaluator Corporation, which later became known as E.S.E. Corporation. The E.S.E. Corporation (E.S.E.) was the parent corporation of E.S.E. Grafix Corporation, E.S.E. International Systems, Inc., E.S.E. Stock Transfer Corporation and E.S.E. Executive Flight Center. These subsidiaries were controlled and managed as a group by E.S.E.

4. Petitioner, Roger Fischer, was president of Stock Transfer. During 1972, petitioner was aware that E.S.E. and its subsidiaries were experiencing cash flow problems and difficulty in paying withholding taxes due. Petitioner assisted in the "juggling" of bills and met frequently with the comptroller of E.S.E. to discuss such matters as the status of purchase orders, cash availability in banks, bills outstanding and withholding taxes due and overdue.

5. Petitioner had the authority to sign checks. He testified that the principal stockholder of E.S.E. restricted him from signing checks over \$1,000.00 without his approval. He further testified that although he was president of Stock Transfer and aware of withholding taxes due, he was not given the approval to authorize their payment.

6. Petitioner was a stockholder of E.S.E. and of some of its subsidiaries, but could not recall the specific number of shares owned by him or the percentage of the total stock owned by him in each corporation.

7. Petitioner testified that he resigned from Stock Transfer but offered no documentary evidence establishing his testimony.

CONCLUSIONS OF LAW

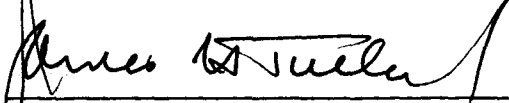
A. That petitioner, Roger Fischer, is a person who willfully failed to collect, or truthfully account for and pay over personal income taxes withheld by E.S.E. Stock Transfer Corporation during 1972; and as such, is subject to a penalty in accordance with the meaning and intent of sections 685(g) and 685(n) of the Tax Law.

B. That the petition of Roger Fischer is denied and the Notice of Deficiency issued September 29, 1975 for \$822.02 is sustained.

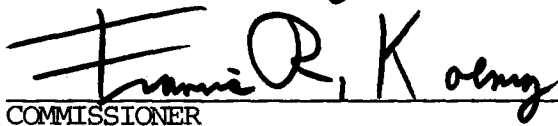
DATED: Albany, New York

MAY 16 1980

STATE TAX COMMISSION

  
\_\_\_\_\_  
PRESIDENT

  
\_\_\_\_\_  
COMMISSIONER

  
\_\_\_\_\_  
COMMISSIONER