

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
of

James Griffin

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 - 1972. :

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 28th day of November, 1980, he served the within notice of Decision by certified mail upon James Griffin, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

James Griffin
5 Sutton Pl.
Verona, NJ 07044

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
28th day of November, 1980.

Suzanne A. Bank

Jay Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

James Griffin :

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 - 1972. :

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 28th day of November, 1980, he served the within notice of Decision by certified mail upon Emil Sebetic 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. Emil Sebetic
29 Park Ave.
Manhasset, NY 11030

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
28th day of November, 1980.

Deborah A Bank

J. Vredenburg

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

November 28, 1980

James Griffin
5 Sutton Pl.
Verona, NJ 07044

Dear Mr. Griffin:

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
Emil Sebetic
29 Park Ave.
Manhasset, NY 11030
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
JAMES GRIFFIN : DECISION
for Redetermination of Deficiencies or for :
Refunds of Personal Income Tax under Article 22 :
of the Tax Law for the Years 1970, 1971 and :
1972. :
:

Petitioner, James Griffin, 5 Sutton Place, Verona, New Jersey 07044, filed petitions for redetermination of deficiencies or for refunds of personal income tax under Article 22 of the Tax Law for the years 1970, 1971 and 1972 (File Nos. 14555 and 14620).

A small claims hearing was held before William Valcarcel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, on April 24, 1980 at 2:45 P.M. Petitioner, James Griffin, appeared with Emil Sebetic, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Paul Lefebvre, Esq., of counsel).

ISSUE

Whether petitioner, James Griffin, is subject to a penalty under section 685(g) of the Tax Law, as a person who willfully failed to collect, truthfully account for, and pay over withholding taxes.

FINDINGS OF FACT

1. E.P.G. Computer Services, Inc. (E.P.G.) withheld personal income taxes from its employees in the sum of \$48,059.95 during the year 1971, and \$23,190.87 during the year 1972. Payments in the sum \$44,501.13 were remitted for the year 1971. No payments were remitted for the year 1972.

2. On July 30, 1973, the Income Tax Bureau issued a Notice of Deficiency in the sum of \$26,749.69, along with an explanatory Statement of Deficiency on which a penalty under section 685(g) of the Tax Law was imposed against petitioner, James Griffin, as a person who willfully failed to collect and/or pay over withholding taxes of E.P.G.

3. Automated Composition Service, Inc. (Automated Composition) withheld, but did not remit personal income taxes from its employees in the sum of \$1,914.42 during the year 1972. Withholding tax returns were not filed by Automated Composition for the period March 1, 1970 to December 31, 1970. Accordingly, the Income Tax Bureau estimated that \$1,500.00 was due for the aforementioned period based on an average amount of tax withheld on previous returns.

4. On March 25, 1974, the Income Tax Bureau issued a Notice of Deficiency in the sum of \$3,414.42, along with an explanatory Statement of Deficiency, on which a penalty under section 685(g) of the Tax Law was imposed against petitioner, James Griffin, as a person who willfully failed to collect and /or pay over withholding taxes of Automated Composition.

5. Petitioner, James Griffin, was hired by E.P.G. in April 1969 as vice-president of systems and programs, with the sole responsibility of developing computer programs and supervising programmers. On May 27, 1969, petitioner purchased 300 shares of stock in E.P.G. (@ \$10.00 a share) as a gesture of good faith. E.P.G. had previously made a public offering of its stock for approximately \$1,000,000.00.

6. During the early part of 1972, petitioner was assigned the title of Director of E.P.G. with authority to sign checks. Checks issued by E.P.G. required two authorized signatures. However, petitioner's duties remained unchanged, and merely co-signed five checks during his tenure as director.

7. Petitioner did not have a voice in the financial and managerial functions of E.P.G. As a corporate officer or director, he was never asked to attend board meetings, and never participated in formulating corporate policy.

8. Petitioner terminated his services for E.P.G. as a corporate officer on May 1, 1972, as a director on May 3, 1972.

9. Automated Composition was a subsidiary of E.P.G. However, petitioner was never an employee, stockholder or corporate officer of Automated Composition. In addition, petitioner was never assigned and never performed any functions for Automated Composition.

10. While employed with E.P.G., petitioner was never aware that the personal income taxes withheld by E.P.G. and Automated Composition were not being paid.

CONCLUSIONS OF LAW

A. That petitioner, James Griffin, was not a person, as defined by section 685(n) of the Tax Law, who willfully failed to collect and pay over personal income taxes withheld by E.P.G. Computer Service, Inc. during the years 1970 and 1972.

B. That petitioner, James Griffin, is not subject to a penalty within the meaning and intent of section 685(g) of the Tax Law.

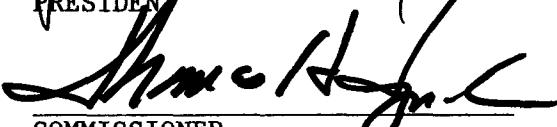
C. That the petitions of James Griffin are granted and the notices of deficiency issued July 30, 1973 and March 25, 1974 are cancelled.

DATED: Albany, New York

NOV 28 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

James Griffin :

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 & 1972. :

State of New York

County of Albany

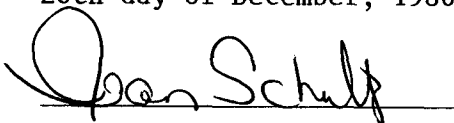
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 26th day of December, 1980, he served the within notice of Corrected Decision by certified mail upon James Griffin, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

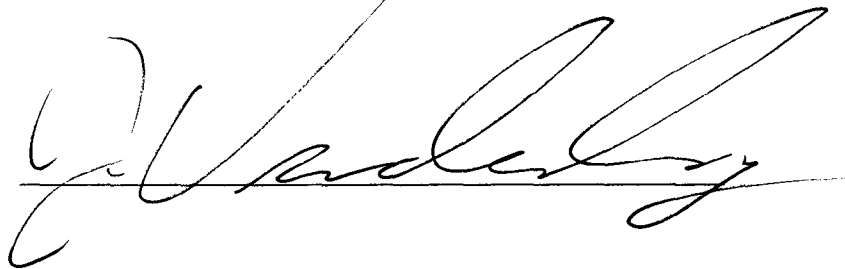
James Griffin
5 Sutton Pl.
Verona, NJ 07044

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
26th day of December, 1980.


Joan Schult


Jay Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
of

James Griffin

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
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State of New York
County of Albany

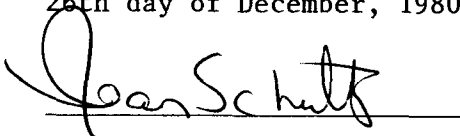
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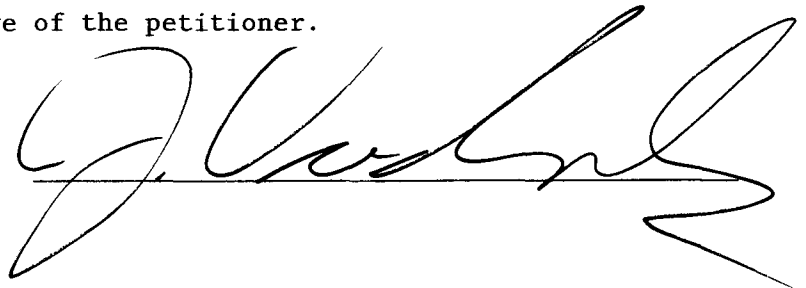
Mr. Emil Sebetic
29 Park Avenue
Manhasset, NY 11030

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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
26th day of December, 1980.


Jean Schultz



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

December 26, 1980

James Griffin
5 Sutton Pl.
Verona, NJ 07044

Dear Mr. Griffin:

Please take notice of the Corrected 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
Emil Sebetic
29 Park Avenue
Manhasset, NY 11030
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
JAMES GRIFFIN	:	CORRECTED DECISION
for Redetermination of Deficiencies or for	:	
Refunds of Personal Income Tax under Article 22	:	
of the Tax Law for the Years 1970, 1971 and	:	
1972.	:	

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3. Automated Composition Service, Inc. (Automated Composition) withheld, but did not remit personal income taxes from its employees in the sum of \$1,914.42 during the year 1972. Withholding tax returns were not filed by Automated Composition for the period March 1, 1970 to December 31, 1970. Accordingly, the Income Tax Bureau estimated that \$1,500.00 was due for the aforementioned period based on an average amount of tax withheld on previous returns.

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5. Petitioner, James Griffin, was hired by E.P.G. in April 1969 as vice-president of systems and programs, with the sole responsibility of developing computer programs and supervising programmers. On May 27, 1969, petitioner purchased 300 shares of stock in E.P.G. (@ \$10.00 a share) as a gesture of good faith. E.P.G. had previously made a public offering of its stock for approximately \$1,000,000.00.

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9. Automated Composition was a subsidiary of E.P.G. However, petitioner was never an employee, stockholder or corporate officer of Automated Composition. In addition, petitioner was never assigned and never performed any functions for Automated Composition.

10. While employed with E.P.G., petitioner was never aware that the personal income taxes withheld by E.P.G. and Automated Composition were not being paid.

CONCLUSIONS OF LAW

A. That petitioner, James Griffin, was not a person, as defined by section 685(n) of the Tax Law, who willfully failed to collect and pay over personal income taxes withheld by E.P.G. Computer Service, Inc. during the years 1971 and 1972 and by Automated Composition Service, Inc. during the years 1970 and 1972.

B. That petitioner, James Griffin, is not subject to a penalty within the meaning and intent of section 685(g) of the Tax Law.

C. That the petitions of James Griffin are granted and the notices of deficiency issued July 30, 1973 and March 25, 1974 are cancelled.

DATED: Albany, New York

DEC 26 1980

STATE TAX COMMISSION

James B. Sullivan
PRESIDENT

Thomas H. Griffin
COMMISSIONER

Francis R. Koenig
COMMISSIONER