

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
of

Orrin Hein

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

Orrin Hein
211 Central Park West
New York, NY 10024

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.

Deborah A. Bank

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

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of

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

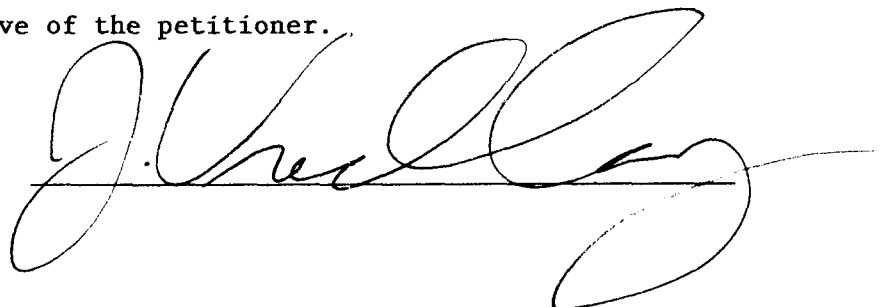
Ms. Sandra Gale Behrle
Austrian, Lance & Stewart, P.C.
630 Fifth Ave., Rockefeller Center
New York, NY 10020

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



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

October 17, 1980

Orrin Hein
211 Central Park West
New York, NY 10024

Dear Mr. Orrin:

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
Sandra Gale Behrle
Austrian, Lance & Stewart, P.C.
630 Fifth Ave., Rockefeller Center
New York, NY 10020
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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| In the Matter of the Petition | : | |
| | : | |
| of | : | |
| | : | |
| ORRIN HEIN | : | DECISION |
| | : | |
| for Redetermination of a Deficiency or | : | |
| for Refund of Personal Income Tax under | : | |
| Article 22 of the Tax Law for the Years | : | |
| 1970 and 1971. | : | |

Petitioner, Orrin Hein, 211 Central Park West, New York, New York 10024, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1970 and 1971 (File No. 27242).

A formal hearing was held before Robert F. Mulligan, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on April 22, 1980 at 9:30 A.M. Petitioner appeared by Austrian, Lance & Stewart, P.C. (Sandra Gale Behrle, Esq., of counsel). The Audit Division appeared by Ralph J. Vecchio, Esq. (J. Ellen Purcell, Esq., of counsel).

ISSUE

Whether petitioner was a person required to collect, truthfully account for and pay over personal income taxes withheld from the employees of Norton Nelson, Incorporated and wilfully failed to do so and is thus liable to a penalty under section 685(g) of the Tax Law.

FINDINGS OF FACT

1. On October 30, 1972, the Income Tax Bureau issued a Statement of Deficiency and Notice of Deficiency against petitioner, Orrin Hein, imposing a penalty of \$12,766.13 for the years 1970 and 1971 under section 685(g) of the Tax Law. The penalty was equal to the unpaid income taxes withheld from the

employees of Norton Nelson, Incorporated ("Norton").

2. Petitioner was an employee of and principal in Hein & Company, Inc., a member firm of the National Association of Securities Dealers, Inc. During 1970, one Ralph LiPuma, president of Norton, a garment manufacturer, contacted petitioner about raising capital for Norton. After reviewing the business and its plans, petitioner arranged for some of his clients to invest in Norton.

3. Petitioner became a member of the board of directors of Norton in order to monitor his clients' investments. He was not a shareholder of Norton nor was he an officer or employee of Norton.

4. Petitioner was not authorized to sign checks on behalf of Norton and had no responsibility for management of its payroll or preparation of its tax returns.

5. Petitioner first became aware of the fact that Norton was not making proper withholding payments when he received notice of a proposed Federal penalty dated July 2, 1973. The Federal penalty against Mr. Hein was subsequently cancelled by the Internal Revenue Service.

CONCLUSIONS OF LAW

A. That petitioner, Orrin Hein, was not a person required to collect, truthfully account for and pay over personal income taxes withheld from the employees of Norton Nelson, Incorporated, within the meaning of subsections (n) and (g) of section 685 of the Tax Law and thus is not liable to a penalty under subsection (g) of said section.

B. That the petition of Orrin Hein is granted, and the Notice of Deficiency is cancelled.

DATED: Albany, New York

OCT 17 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER