

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Albert Lonstein :
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 1969. :

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 31st day of October, 1980, he served the within notice of Decision by certified mail upon Albert Lonstein, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

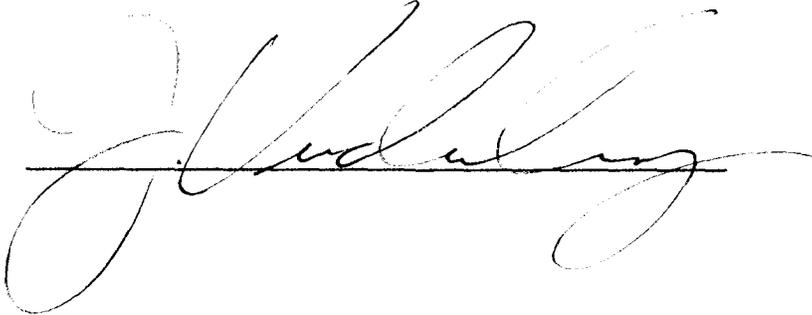
Albert Lonstein
Terrace Hill
Ellenville, NY 12428

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
31st day of October, 1980.

Deborah A. Bank



STATE OF NEW YORK
STATE TAX COMMISSION

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Personal Income Tax :
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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 31st day of October, 1980, he served the within notice of Decision by certified mail upon Bernard Lipsky 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. Bernard Lipsky
Lipsky & Jaffe, CPA's
P.O. Box 9
Monticello, NY 12701

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
31st day of October, 1980.

Debra A Bark

J. Vredenburg

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

October 31, 1980

Albert Lonstein
Terrace Hill
Ellenville, NY 12428

Dear Mr. Lonstein:

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
Bernard Lipsky
Lipsky & Jaffe, CPA's
P.O. Box 9
Monticello, NY 12701
Taxing Bureau's Representative

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
of
ALBERT LONSTEIN
for Redetermination of a Deficiency or
for Refund of Personal Income Tax under
Article 22 of the Tax Law for the Year
1969.

DECISION

Petitioner, Albert Lonstein, Terrace Hill, Ellenville, New York 12428, 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 1969 (File No. 18256).

A formal hearing was held before Jerome M. Hesch, Hearing Officer, at the offices of the State Tax Commission, Building #9, State Campus, Albany, New York, on March 12, 1980 at 9:15 A.M. Petitioner appeared by Bernard Lipsky, CPA. 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 New York State income taxes withheld from the wages of employees of Wawarsing Construction Corp. for 1969.

FINDINGS OF FACT

1. Wawarsing Construction Corp. failed to pay over to the Income Tax Bureau New York personal income tax withheld from the wages of its employees in the amount of \$5,351.50 for 1969.
2. On January 5, 1977, the Audit Division issued a Notice of Deficiency against petitioner, Albert Lonstein, asserting a penalty equal to the amount

of the unpaid New York State withholding tax due from Wawarsing Construction Corp. for 1969.

3. Petitioner was an officer of the corporation in title only, so that the association of the company with his name would enhance its prestige. Petitioner was an investor in the corporation.

4. Petitioner was not actively involved in the management and operations of the corporation. He received no salary and performed no services for the corporation other than some legal work involving the obtaining of a mortgage at the inception of the company.

5. Petitioner had no part in the hiring, supervision or firing of employees. He did not know any of the employees.

6. Petitioner did not have possession of, access to or control over the books and records of the corporation. He did not prepare or sign tax returns or any other documents for the corporation.

7. Petitioner did not have possession of or access to the corporation's funds or the corporate checkbook. All payroll checks were prepared by others. The signature on the corporation's checks was a rubber stamp of petitioner's name. He had no part in determining which creditors would or would not be paid.

CONCLUSIONS OF LAW

A. That petitioner, Albert Lonstein, although an officer of Wawarsing Construction Corp., was not in control of nor had any say in the management and operations of the company. Petitioner was not a person under a duty to perform the tasks of collecting, accounting for and paying over the withholding taxes deducted from the wages of the employees of the corporation within the meaning of subdivision (n) of section 685 of the Tax Law.

B. That even if petitioner was to be deemed a person required to collect, truthfully account for and pay over the aforementioned taxes, he did not willfully cause the corporation to fail to collect, account for and pay over such taxes within the meaning of section 685(g) of the Tax Law.

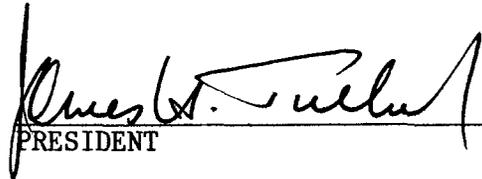
C. That the penalty equal to the amount of the unpaid withholding taxes of Wawarsing Construction Corp. was improperly asserted against petitioner under section 685(g) of the Tax Law.

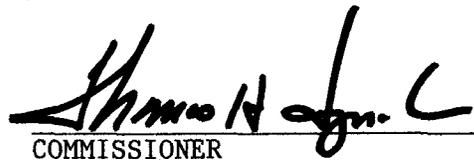
D. That the petition of Albert Lonstein is granted and the Notice of Deficiency issued on January 5, 1977, is cancelled.

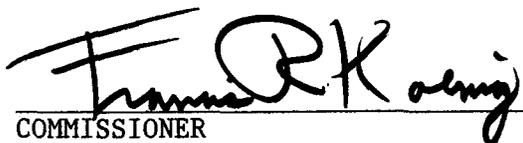
DATED: Albany, New York

STATE TAX COMMISSION

OCT 31 1980


PRESIDENT


COMMISSIONER


COMMISSIONER