

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Robert Schecter :

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 1969. :

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 Robert Schecter, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Robert Schecter
3 Avondale Rd.
Plainview, NY 11803

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.

Dorothy A. Bank

[Signature]

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

October 31, 1980

Robert Schechter
3 Avondale Rd.
Plainview, NY 11803

Dear Mr. Schechter:

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

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
ROBERT SCHECHTER	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1969.	:	

Petitioner, Robert Schechter, 3 Avondale Road, Plainview, New York 11803, 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. 19718).

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, New York, on March 11, 1980 at 9:15 A.M. Petitioner, Robert Schechter, appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (A. Schwadron, Esq., of counsel).

ISSUE

Whether petitioner is subject to a penalty in accordance with section 685(g) of the Tax Law as a person who willfully failed to collect, or truthfully account for and pay over withholding taxes for the year 1969.

FINDINGS OF FACT

1. Continental Fifth Avenue, Ltd. ("Continental") was a corporation, located and organized in the State of New York. The Audit Division's records indicated that Continental withheld from its employees New York State personal income taxes in the sum of \$3,355.72 during the year 1969, and remitted \$1,678.56 for that year.

2. On February 28, 1977, the Audit Division issued a Notice of Deficiency in the amount of \$1,677.16, imposing a penalty under section 685(g) of the Tax Law against petitioner, Robert Schechter.

3. Petitioner is a teacher and was employed, full time, within the New York City school system during 1969. In addition, petitioner was employed on a part time basis with Continental.

4. Continental was a family owned business, with 80 percent of the stock belonging to petitioner's mother. Petitioner was not a stockholder, but was made a corporate officer with authority to sign checks.

5. Petitioner's duties with Continental consisted of odd jobs such as shipping, answering telephone inquiries and selling. Petitioner did not have any authority over the managerial, operational, or financial functions of the corporation. A notarized statement signed by the President of Continental verified petitioner's duties, functions, and the extent of his authority.

6. Petitioner was not involved in paying salaries, or in the withholding of payroll taxes and was not aware that New York State withholding taxes were not being paid.

CONCLUSIONS OF LAW

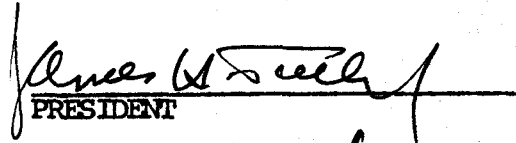
A. That petitioner, Robert Schechter, was not a person, as defined under section 685(n) of the Tax Law, who willfully failed to collect, or truthfully account for and pay over withholding taxes for Continental Fifth Avenue, Ltd. during the year 1969. Accordingly, petitioner, Robert Schechter, is not subject to a penalty in accordance with the meaning and intent of section 685(g) of the Tax Law.

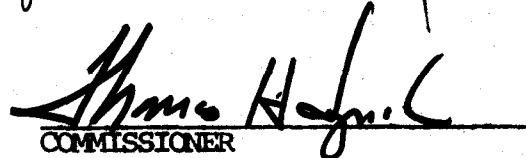
B. That the petition of Robert Schechter is granted and the Notice of Deficiency issued February 28, 1977 is cancelled.

DATED: Albany, New York

STATE TAX COMMISSION

OCT 31 1980


PRESIDENT


COMMISSIONER


COMMISSIONER