

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition  
of

Jack Taback

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 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 7th day of July, 1980, he served the within notice of Decision by certified mail upon Jack Taback, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

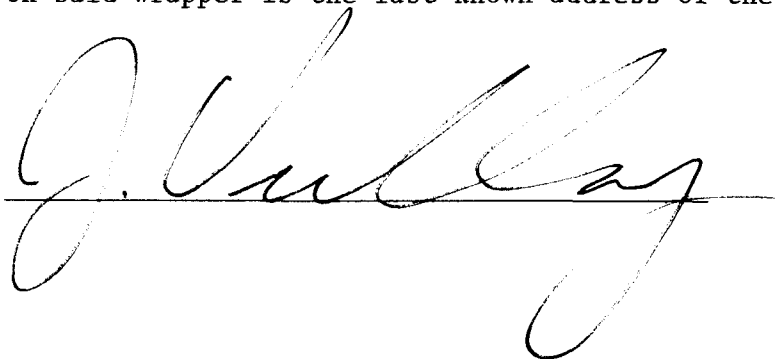
Jack Taback  
330 W. 28th St.  
New York, NY

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  
7th day of July, 1980.

Eutrah A. Bunk



STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition  
of

Jack Taback

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 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 7th day of July, 1980, he served the within notice of Decision by certified mail upon Victor A. Buglione the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

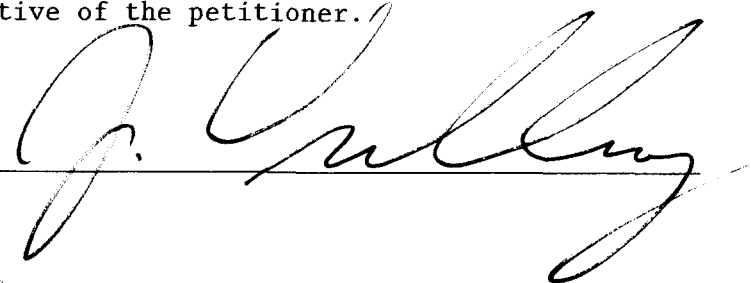
Mr. Victor A. Buglione  
16 Court St.  
Brooklyn, NY 11242

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  
7th day of July, 1980.

Victor A. Bank



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

July 7, 1980

Jack Taback  
330 W. 28th St.  
New York, NY

Dear Mr. Taback:

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  
Victor A. Buglione  
16 Court St.  
Brooklyn, NY 11242  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
JACK TABACK	:	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, Jack Taback, 330 West 28th Street, New York, New York 10001, 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. 13664).

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 January 18, 1980 at 9:15 A.M. Petitioner appeared by Victor A. Buglione, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (A. Scopellito, 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 withholding taxes for the year 1972.

FINDINGS OF FACT

1. J. S. Love and Company, Inc. (corporation) was a brokerage firm located in the City and State of New York. The Income Tax Bureau's records indicated that the corporation withheld from its employees New York State personal income taxes in the sum of \$12,361.38 during the year 1972, and remitted

\$10,415.19 for that period. Subsequently, the corporation was billed the balance due of \$1,946.19, along with penalties and interest.

2. On June 30, 1975, the Income Tax Bureau issued a Notice of Deficiency, along with an explanatory Statement of Deficiency, imposing a penalty pursuant to section 685(g) of the Tax Law against petitioner, Jack Taback, in the amount of \$1,946.19 for the year 1972. The Income Tax Bureau ascertained that petitioner was a responsible corporate officer since its records indicated that he was listed as a vice-president on the New York State corporate tax return of J. S. Love and Company, Inc. filed for the year 1971.

3. On March 19, 1976, the Income Tax Bureau abated \$1,174.25 of the penalty imposed. Accordingly, the net amount of the penalty at issue was reduced to \$771.94.

4. Petitioner, Jack Taback, was a registered representative and vice-president of the corporation until March, 1972. Petitioner had no authority over the financial, managerial and operational functions of the corporation.

5. The Audit Division did not disclose when, during the year 1972, the taxes withheld by the corporation were collected or became due.

#### CONCLUSIONS OF LAW

A. That petitioner, Jack Taback, was not a person as defined in section 685(n) of the Tax Law required to collect, truthfully account for and pay over taxes withheld by J. S. Love and Company, Inc. during the year 1972.

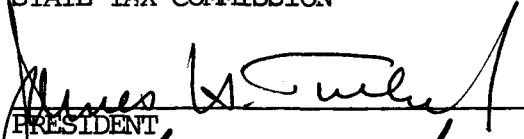
B. That petitioner, Jack Taback, is not subject to a penalty under section 685(g) of the Tax Law.

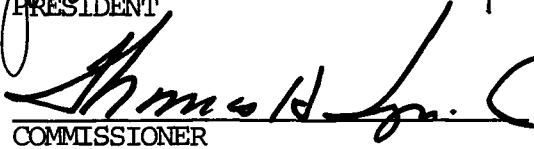
C. That the petition of Jack Taback is granted and the Notice of Deficiency issued June 30, 1975 for the year 1972 is cancelled.

DATED: Albany, New York

JUL 07 1980

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER