

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :

of

Allen Weintraub :

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 1972,1973. :

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 3rd day of October, 1980, he served the within notice of Decision by certified mail upon Allen Weintraub, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Allen Weintraub  
Two Horizen Rd.  
Fort Lee, NJ

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  
3rd day of October, 1980.

Lettie Bank



STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of

Allen Weintraub :

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 1972,1973. :

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 3rd day of October, 1980, he served the within notice of Decision by certified mail upon Randy Blaustein the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

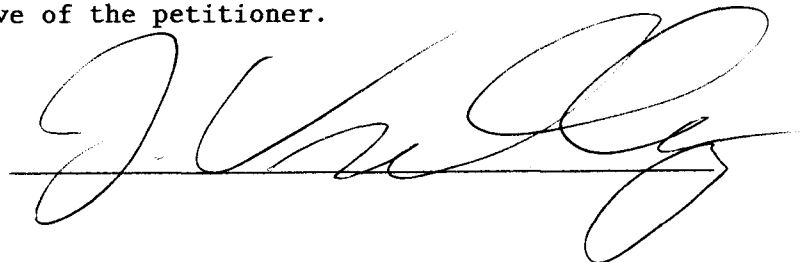
Mr. Randy Blaustein  
Siegel & Mendlowitz, P.C.  
310 Madison Ave.  
New York, NY 10017

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  
3rd day of October, 1980.

Robert Brink



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

October 3, 1980

Allen Weintraub  
Two Horizen Rd.  
Fort Lee, NJ

Dear Mr. Weintraub:

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  
Randy Blaustein  
Siegel & Mendlowitz, P.C.  
310 Madison Ave.  
New York, NY 10017  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
	:	
ALLEN WEINTRAUB	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Years	:	
1972 and 1973.	:	

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Petitioner, Allen Weintraub, 2 Horizen Road, Fort Lee, New Jersey, 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 1972 and 1973 (File No. 12690).

A small claims hearing was held before Allen Caplowaith, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on September 20, 1979 and February 14, 1980 at 2:45 P.M. and 9:00 A.M. respectively. Petitioner appeared by Randy Blaustein, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Frank Levitt, Esq., of counsel).

#### ISSUE

Whether petitioner is subject to a penalty pursuant to section 685(g) of the Tax Law as a person who failed to collect, truthfully account for and pay over New York State withholding taxes due from Fun Scents Ltd. for the period July 1, 1972 through June 30, 1973.

#### FINDINGS OF FACT

1. Fun Scents Ltd., 43 West 61st Street, New York, New York 10023, failed to pay over the New York State personal income taxes withheld from the wages of its employees for the period July 1, 1972 through June 30, 1973.

2. On April 11, 1975, the Audit Division issued a Statement of Deficiency in conjunction with a Notice of Deficiency against petitioner, Allen Weintraub, wherein a penalty was asserted, pursuant to section 685(g) of the Tax Law, for an amount equal to the New York State withholding taxes due from Fun Scents Ltd. for the periods as follows:

<u>Withholding Tax Period</u>	<u>Amount</u>
July 1 to December 31, 1972	\$113.50
January 1 to June 30, 1973	<u>176.40</u>
Total Due	\$289.90

Said penalty was asserted on the ground that petitioner was a person required to collect, truthfully account for and pay over the withholding taxes and that he willfully failed to do so.

3. Petitioner, who was listed as Secretary of Fun Scents Ltd., contended that he was an inactive investor and officer-stockholder of the corporation during the periods at issue. He further contended that he was employed full time as an officer of ASR Recording Corporation and his sole involvement with the business activities of Fun Scents Ltd. was limited to the signing of checks which were sent to him.

4. Fun Scents Ltd. filed an Employer's Return - Personal Income Tax Withheld, Form IT-2101, for the period September 11, 1972 through December 31, 1972 whereon it indicated that its first payment of wages was September 15, 1972. Said return, which was signed by the corporation's President, Stanley Lewis, reported tax withheld of \$113.50. Additionally, Fun Scents Ltd. filed an Employer's Return -Personal Income Tax Withheld for the semi-annual period January 1, 1973 through June 30, 1973. Said return, also signed by Stanley Lewis, reported tax withheld of \$176.40.

5. Stanley Lewis, President of Fun Scents Ltd., submitted an affidavit which states in pertinent part that "Allen Weintraub was not active in the

Corporation business affairs and never instructed the Corporation not to pay taxes."

6. As the result of an Internal Revenue Service investigation, petitioner was found not to be a person responsible for the payment of Federal withholding taxes for the quarterly periods ended December 31, 1972, March 31, 1973 and June 30, 1973. Stanley Lewis, President of Fun Scents Ltd., was determined to be responsible and signed the Federal Proposed Assessment of 100 Percent Penalty form for the above stated periods.

CONCLUSIONS OF LAW

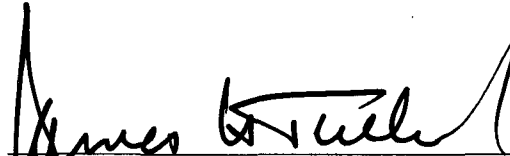
A. That petitioner, Allen Weintraub, was not a person required to collect, truthfully account for and pay over the New York State personal income taxes withheld from the employees of Fun Scents Ltd. for the periods at issue, within the meaning and intent of subsections (g) and (n) of section 685 of the Tax Law.

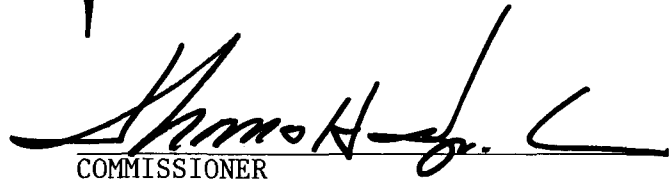
B. That the petition of Allen Weintraub is granted and the Notice of Deficiency dated April 11, 1975 is hereby cancelled.

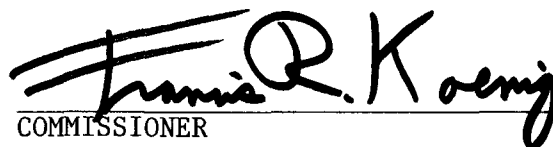
DATED: Albany, New York

OCT 03 1980

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER