

STATE OF NEW YORK

STATE TAX COMMISSION

---

In the Matter of the Petition :  
of :  
William D. Abel :  
: 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 :  
1971. :

---

State of New York  
County of Albany

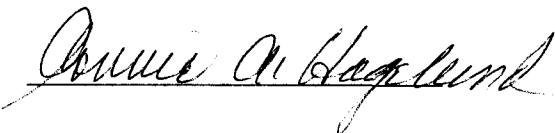
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 14th day of August, 1981, he served the within notice of Decision by certified mail upon William D. Abel, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

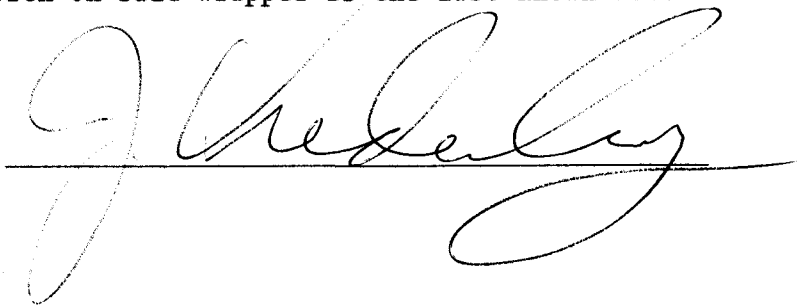
William D. Abel  
27 Glen Rd.  
Westbury, NY 11590

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  
14th day of August, 1981.

  
Anne M. Haglund

  
Jay Vredenburg

STATE OF NEW YORK  
STATE TAX COMMISSION

---

In the Matter of the Petition :  
of :  
William D. Abel :  
: 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 :  
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 14th day of August, 1981, he served the within notice of Decision by certified mail upon Joel S. Sankel the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Joel S. Sankel  
10 Columbus Circle  
New York, NY 10019

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  
14th day of August, 1981.

*Connie D. Haglund*

*J. Vredenburg*

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

August 14, 1981

William D. Abel  
27 Glen Rd.  
Westbury, NY 11590

Dear Mr. Abel:

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  
Joel S. Sankel  
10 Columbus Circle  
New York, NY 10019  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

---

In the Matter of the Petition :  
of :  
WILLIAM D. ABEL : DECISION  
for Redetermination of a Deficiency or for :  
Refund of Personal Income Tax under Article 22 :  
of the Tax Law for the Year 1971. :  

---

Petitioner, William D. Abel, 27 Glen Road, Westbury, New York 11590, 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 1971 (File No. 19850).

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 December 8, 1980 at 2:45 P.M. Petitioner, William D. Abel, appeared with Joel S. Sankel, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (A. Scopellito, Esq., of counsel).

ISSUE

Whether petitioner is subject to a penalty under section 685(g) of the Tax Law.

FINDINGS OF FACT

1. Data Conversion Corporation of America, also known as D.C.C.A., Inc. (hereinafter "DCCA") withheld from its employees \$15,234.28 in personal income taxes during the year 1971 and remitted \$13,033.52 of said amount.

2. On May 23, 1977 the Audit Division issued a Notice of Deficiency for \$2,200.76 for the year 1971 to petitioner William D. Abel along with a Statement of Deficiency on which petitioner was held subject to a penalty under section 685(g) of the Tax Law as a person who willfully failed to collect, truthfully

account for and pay over personal income taxes withheld from the employees of DCCA during the year 1971.

3. Petitioner, William D. Abel, was hired as treasurer of DCCA in December, 1970 under the direct supervision of its president and corporate secretary. Although petitioner was granted the authority to sign corporate checks, no checks could be remitted or paid without the approval of the president.

4. Petitioner's primary function was to supervise the corporation's bookkeeping activities. He did not have any authority or voice in the managerial and/or the operational functions of DCCA. Petitioner testified that upon his departure from DCCA on December 9, 1971, all withholding taxes were accounted for and paid, except for withholding taxes due to be remitted on December 15, 1971 and January 15, 1972. New York State personal income taxes withheld from the employees of DCCA were remitted on a monthly basis. Accordingly, petitioner argued that the taxes withheld during November and December 1971 were due to be remitted December 15, 1971 and January 15, 1972, respectively, and therefore, he could not be held responsible for said taxes since they were due after his departure of December 9, 1971.

#### CONCLUSIONS OF LAW

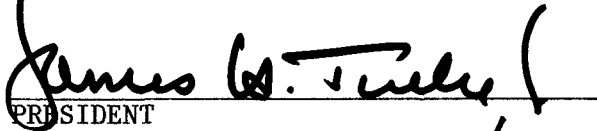
A. That petitioner, William D. Abel, was not a person as defined in section 685(n) of the Tax Law who willfully failed to collect, truthfully account for and pay over personal income taxes withheld from the employees of Data Conversion Corporation of America (a/k/a D.C.C.A., Inc.) during the year 1971 in the sum of \$2,200.76 and is not subject to a penalty under section 685(g) of the Tax Law.

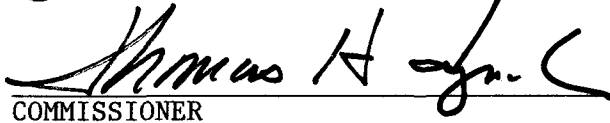
B. That the petition of William D. Abel is granted and the Notice of Deficiency issued May 23, 1977 is cancelled.

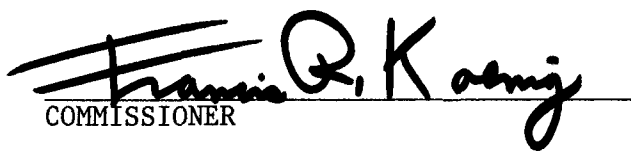
DATED: Albany, New York

AUG 14 1981

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER