

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Leonard Bader :
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 :
1975 & 1976.

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 30th day of October, 1981, he served the within notice of Decision by certified mail upon Leonard Bader, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Leonard Bader
28 Oaklawn Ave.
Cranston, RI 02920

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
30th day of October, 1981.

Connie R. Haglund

J. Vredenburg

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

October 30, 1981

Leonard Bader
28 Oaklawn Ave.
Cranston, RI 02920

Dear Mr. Bader:

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	:	
LEONARD BADER	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Years 1975 and 1976.	:	

Petitioner, Leonard Bader, 28 Oaklawn Avenue, Cranston, Rhode Island 02920, 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 1975 and 1976 (File No. 26174).

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 June 16, 1981 at 1:15 P.M. Petitioner appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (Angelo Scopellito, Esq., of counsel).

ISSUE

Whether petitioner is subject to a penalty pursuant to section 685(g) of the Tax Law as a person who willfully failed to collect, truthfully account for and pay over the New York State withholding taxes due from Morris Bader & Sons, Corp.

FINDINGS OF FACT

1. Morris Bader & Sons, Corp., 330 Seventh Avenue, New York, New York 10001 failed to pay over the New York State personal income taxes withheld from the wages of its employees for the periods as follows:

<u>WITHHOLDING TAX PERIOD</u>	<u>AMOUNT</u>
January 1, 1975 to February 28, 1975	\$ 50.10
April 1, 1975 to May 31, 1975	92.80
July 1, 1975 to December 31, 1975	284.00
January 1, 1976 to September 30, 1976	170.30
TOTAL	<u>\$597.20</u>

2. On January 29, 1979 the Audit Division issued a Statement of Deficiency in conjunction with a Notice of Deficiency against petitioner, Leonard Bader, 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 Morris Bader & Sons, Corp. 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. During the periods at issue petitioner was president of Morris Bader & Sons Corp.

4. Petitioner readily admitted, that he was a person responsible for the payment of the withholding taxes at issue, however, he contended that his brother, George Bader, who was also an officer of the corporation, should assume the sole liability since all previous debts of the corporation had been borne solely by the petitioner.

CONCLUSIONS OF LAW

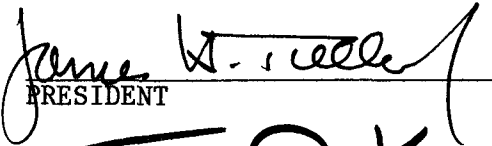
A. That petitioner, Leonard Bader, was a person required to collect, truthfully account for and pay over the personal income taxes withheld from the employees of Morris Bader & Sons, Inc. for the periods at issue herein. Accordingly, he is liable for a penalty equal to the taxes withheld and not paid over to the State for such periods pursuant to sections 685(g) and 685(n) of the Tax Law.

B. That the petition of Leonard Bader is denied and the Notice of Deficiency dated January 29, 1979 is sustained.

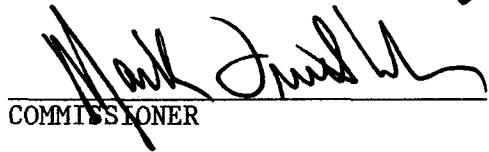
DATED: Albany, New York

OCT 30 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER