

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition  
of  
Robert Baum

:

:

: 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 :  
1974 - 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 15th day of May, 1981, he served the within notice of Decision by certified mail upon Robert Baum, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Robert Baum  
1815 Palmer Ave.  
Larchmont, NY 10538

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  
15th day of May, 1981.

Charles A. Hagelund

J. Vredenburg

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Robert Baum :

: 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 :  
1974 - 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 15th day of May, 1981, he served the within notice of Decision by certified mail upon Peter Hodkin 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. Peter Hodkin  
Shapiro, Mortman & Schwartz  
800 Third Ave.  
New York, NY 10022

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  
15th day of May, 1981.

*Cornie A. Hagelund*

*J. Vredenburg*

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

May 15, 1980

Robert Baum  
1815 Palmer Ave.  
Larchmont, NY 10538

Dear Mr. Baum:

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  
Peter Hodkin  
Shapiro, Mortman & Schwartz  
800 Third Ave.  
New York, NY 10022  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
ROBERT BAUM : DECISION  
for Redetermination of a Deficiency :  
or for Refund of Personal Income Tax :  
under Article 22 of the Tax Law for :  
the Years 1974, 1975 and 1976.

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Petitioner, Robert Baum, 1815 Palmer Avenue, Larchmont, New York 10538, 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 1974, 1975 and 1976 (File No. 21489).

A small claims hearing was held before Samuel Levy, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on November 17, 1980 at 1:15 P.M. Petitioner appeared by Shapiro, Mortman & Schwartz (Peter Hodkin, Esq.). The Audit Division appeared by Ralph J. Vecchio, Esq. (William Fox, Esq., of counsel).

ISSUE

Whether petitioner was a responsible person required to collect, truthfully account for and pay over withholding taxes due and owing from Artisans Kitchen and Bath, Inc.

FINDINGS OF FACT

1. On November 28, 1977, the Audit Division issued a Notice of Deficiency together with a Statement of Deficiency against petitioner, Robert Baum, asserting penalties against him equal to the amount of unpaid New York State withholding taxes due and owing from Artisans Kitchen and Bath, Inc. (hereinafter "corporation") in the amount of \$867.83 for 1974, 1975 and 1976. The penalty was issued on the ground that petitioner was a person required to collect,

truthfully account for and pay over withholding taxes at issue and that he willfully failed to do so.

2. The corporation was founded in 1970 by Sydney Buss who was its president and principal stockholder. The corporation was engaged in the business of designing and decorating kitchens and baths for its clients.

3. Petitioner, a certified kitchen designer, became affiliated with the corporation during March 1974. In consideration of \$5,000.00 invested by him, the corporation promised to issue its capital stock to him. In addition, petitioner loaned the corporation \$5,000.00 which was to be repaid within thirty (30) days.

Petitioner made several demands on the corporation, its president and corporate attorney for promised stock but such demands were to no avail. Petitioner also made repeated demands on the corporation for return of his \$5,000.00 loan which also proved futile.

4. Petitioner's principal duty was to meet with corporate customers who required specialty designed kitchens and bathrooms. Petitioner designed the makeup and decoration of the required custom designs and estimated cost entailed in its execution. He would then submit the estimated cost to Mr. Buss for his approval.

5. Petitioner, although an authorized signatory, had to obtain Mr. Buss' approval to sign corporate checks. He signed approximately five (5) checks when Mr. Buss was out of the country for approximately four (4) days and materials were being delivered to the corporation C.O.D.

6. Petitioner was not privy to the financial and management policies of the corporation. He was not given any opportunity to be present when the corporate accountant and attorney discussed financial operations of business with Mr. Buss.

Petitioner had no authority to hire and fire employees, nor was he responsible for the preparation of any of the various Federal and State tax returns required to be filed by the corporation. These activities were under the direct control and supervision of Mr. Buss.

7. Mr. Buss continued to exert the same financial and administrative control over all corporate activities as he had done prior to hiring petitioner. He did not permit petitioner to be responsible for or to participate in the corporation's general office work.

Petitioner was prevented by Mr. Buss from access to the corporate books and records as they were under the latter's sole control. Petitioner was unable to obtain any information from the bookkeeper who was hired by and is the wife of Mr. Buss.

8. The corporation's attorney and accountant were retained by Mr. Buss.

9. Petitioner sent a certified letter, postmarked May 5, 1975, to Mr. Sydney Buss, president of the corporation, tendering his resignation as vice-president and officer of the corporation effective immediately. By reply letter, dated May 7, 1975, Mr. Buss terminated petitioner's "employment" with the corporation effective immediately.

#### CONCLUSIONS OF LAW

A. That petitioner Robert Baum was not a person required to collect, truthfully account for and pay over unpaid New York State withholding taxes withheld by Artisans Kitchen and Bath, Inc. within the meaning and intent of subsections (n) and (g) of section 685 of the Tax Law. Accordingly, petitioner is not liable to a penalty in an amount equal to the unpaid withholding taxes of Artisans Kitchen & Bath, Inc. pursuant to section 685(g) of the Tax Law.

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

DATED: Albany, New York

MAY 15 1981

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER