

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Donald Braverman :

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 1968, 1969. :

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 17th day of April, 1981, he served the within notice of Decision by certified mail upon Donald Braverman, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Donald Braverman
2031 N.W. 82nd Way
Sunrise, FL 33322

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
17th day of April, 1981.

Conrad A. Haglund

J. Vredenburg

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

April 17, 1981

Donald Braverman
2031 N.W. 82nd Way
Sunrise, FL 33322

Dear Mr. Braverman:

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	:	
	:	
DONALD BRAVERMAN	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Years	:	
1968 and 1969.	:	

Petitioner, Donald Braverman, 2031 N.W. 82nd Way, Sunrise, Florida 33322, 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 1968 and 1969 (File No. 13091).

By a letter dated April 17, 1977, petitioner waived a formal hearing and requested that this matter be submitted to the State Tax Commission, based on the entire record contained in the file.

ISSUES

- I. Whether petitioner, as president of Unidat Corp., is liable to a penalty equal to the total amount of withholding tax not accounted for and paid over in accordance with the provisions of sections 685(g) and 685(n) of the Tax Law.
- II. Whether the Notice of Deficiency is barred by the statute of limitations.
- III. Whether petitioner is liable for penalties imposed for taxes withheld after he ceased being an officer.

FINDINGS OF FACT

1. On September 24, 1973, the Income Tax Bureau issued a Statement of Deficiency to petitioner, Donald Braverman. Said statement held him liable to

a penalty under section 685(g) of the Tax Law for his failure to collect, account for and pay over withholding taxes due from Unidat Corp. for the tax period January 1, to December 31, 1968, in the amount of \$69.01, and for January 1, to December 31, 1969, in the amount of \$9,450.04, for a total of \$9,519.05. Accordingly, on September 24, 1973, a Notice of Deficiency was issued against petitioner, Donald Braverman, for \$9,519.05. Petitioner filed a timely petition with respect to said notice and claims in part, that the Notice of Deficiency is barred by the statute of limitations.

2. Prior to September 26, 1969, petitioner was president and a director of Unidat Corp., a domestic corporation organized under the laws of the State of New York, with offices at 42 Broadway, New York, New York. Mr. Braverman resigned as president and director of Unidat Corp. on September 26, 1969.

3. On March 5, 1970, the Income Tax Bureau issued a Notice and Demand for Unpaid Withholding Tax Due for the calendar year 1968 to the Unidat Corp. in the amount of \$69.01, plus interest of \$6.77, for a total of \$75.78.

4. On February 29, 1972, the Income Tax Bureau issued a Notice and Demand for Unpaid Withholding Tax Due for the calendar year 1969 to the Unidat Corp. in the amount of \$13,277.31, computed as follows:

Tax Due	\$13,892.60
Tax Paid	<u>4,442.56</u>
Balance of Tax Due	<u>\$ 9,450.04</u>
Interest	\$ 1,464.76
Penalty	<u>2,362.51</u>
Total	<u>\$13,277.31</u>

5. Petitioner, Donald Braverman, was involved in the sales and system operation of Unidat Corp., a computer service corporation. He formulated or assisted in the formulation of policy in the area of marketing programs.

Mr. Braverman did not sign any payroll or tax withholding reports. He signed some corporation checks drawn on Chemical Bank. He was aware of the financial condition of the corporation and that it was insolvent.

6. Unidat Corp. collected withholding taxes during the periods in issue, but failed to pay same as required. The record reasonably established that Unidat Corp. timely filed all withholding tax returns for 1968. The record does not support such a finding for 1969.

CONCLUSIONS OF LAW

A. That the portion of the Notice of Deficiency with respect to 1968 was not timely in that said deficiency was not issued within three (3) years from the date the tax returns from Unidat Corp. were deemed filed in accordance with sections 683(a) and (b)(2) of the Tax Law. The 1968 portion of the Notice of Deficiency is therefore cancelled.

B. That petitioner Donald Braverman has failed to sustain the burden of proof imposed by section 689(e) of the Tax Law to show that 1969 withholding tax returns of Unidat Corp. were filed; that the portion of the Notice of Deficiency issued with respect to 1969 was timely issued within the meaning and intent of section 683 of the Tax Law.

C. That petitioner, Donald Braverman, was under a duty to pay over the withholding taxes for 1969 collected up to September 26, 1969, within the intent and meaning of section 685(n) of the Tax Law.

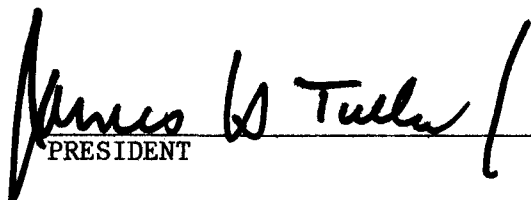
D. That petitioner, Donald Braverman, willfully failed to pay over withholding taxes collected by and due from Unidat Corp. for the period January 1, 1969 to the date of his resignation, September 26, 1969. Accordingly, he is liable to a penalty equal to the tax collected but not paid over for said period (9/12 of \$9,450.04 or \$7,087.53) within the meaning and intent of section 685(g) of the Tax Law.


E. That the portion of the Notice of Deficiency issued September 24, 1973 for 1968 is cancelled. That the portion of the Notice of Deficiency issued September 24, 1973 for 1969 is sustained to the extent indicated in Conclusion of Law "D".

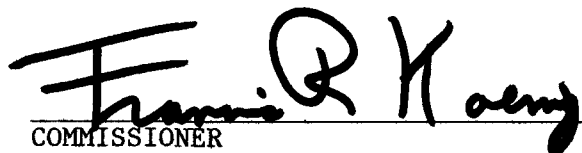
DATED: Albany, New York

STATE TAX COMMISSION

APR 17 1981


PRESIDENT


COMMISSIONER


COMMISSIONER