

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
Francis & Shirley Dashnau

:

:

: 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 - 1977.

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 2nd day of October, 1981, he served the within notice of Decision by certified mail upon Francis & Shirley Dashnau, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Francis & Shirley Dashnau
P.O. Box 14
Oswego, NY 13126

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
2nd day of October, 1981.

Constance A. Hagedorn

J. Vredenburg

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

October 2, 1981

Francis & Shirley Dashnau
P.O. Box 14
Oswego, NY 13126

Dear Mr. & Mrs. Dashnau:

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,

Kathy Pfaffenbach

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	:	
FRANCIS DASHNAU	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Years	:	
1975, 1976 and 1977.	:	

Petitioner, Francis Dashnau, P.O. Box 14, Oswego, New York 13126, 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, 1976 and 1977 (File No. 24942).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, 333 East Washington Street, Syracuse, New York, on December 8, 1980 at 1:15 P.M. Petitioner, Francis Dashnau, appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (Paul A. Lefebvre, Esq., of counsel).

ISSUE

Whether petitioner was a person required to collect, truthfully account for and pay over New York State withholding taxes of County Cleaners of Fulton, Inc. for the years 1975, 1976 and 1977.

FINDINGS OF FACT

1. On July 31, 1978, the Audit Division issued both a Statement of Deficiency and a Notice of Deficiency against petitioner, Francis Dashnau, imposing penalties equal to the amount of New York State withholding taxes due from County Cleaners of Fulton, Inc. (hereinafter "County") for the years 1975 through 1977. This was done on the grounds that he was a person required to

collect, truthfully account for and pay over said taxes, and that he willfully failed to do so. On July 31, 1978, a Notice of Deficiency was issued to him for \$3,361.43.

2. The Audit Division ascertained that the petitioner was a responsible corporate officer since its records indicated that he was listed as president on the New York State corporate tax return of County filed for the year 1975.

3. Petitioner was not listed as an officer or stockholder on the New York State Corporate Tax Return of County filed for the year 1976.

4. Prior to 1972, petitioner, Francis Dashnau, was plant manager of County, a dry cleaning and laundry business. As plant manager, petitioner did dry cleaning work, supervised other employees, hired and fired employees doing the cleaning work, but had no control of the office employees or the books and records of the company.

5. During 1972 Charles N. Bohnsack, the owner of County, notified the petitioner that the business was in financial trouble. The petitioner transferred \$1,800.00 to Charles N. Bohnsack for the purpose of keeping the business solvent and to protect his employment. For this the petitioner received six shares of stock, title of president, but no increase in pay.

6. As the president of County, petitioner retained his responsibility as plant manager. He had no authority to designate which creditors received payment. The payment of creditors was dictated by Charles N. Bohnsack through the bookkeeper or occasionally through the petitioner.

7. In May 1975, upon learning the Federal taxes had not been paid, the petitioner, Francis Dashnau, ordered the bookkeeper to pay the Internal Revenue Service. This caused a rift between the petitioner and the owner Charles N. Bohnsack which lead to the petitioner's resignation as president on June 20,

1975. However, petitioner retained his position as plant manager and after said date was only responsible for managing the cleaning employees.

CONCLUSIONS OF LAW

A. That during the tax period January 1, 1975 through June 20, 1975 although petitioner was an officer of the corporation, he was not a person as defined by section 685(n) of the Tax Law who was under a duty to collect, truthfully account for and pay over withholding taxes with respect to County Cleaners of Fulton, Inc. (See Matter of the Petition of Nicholas Ragone, State Tax Commisison, October 14, 1980).

B. That during the tax period June 21, 1975 through December 31, 1977 petitioner was not a person as defined by section 685(n) of the Tax Law as he remained with the corporation only as an employee. He was not under a duty to collect, truthfully account for and pay over withholding taxes with respect to County Cleaners of Fulton, Inc.

C. That, in accordance with Conclusions of Law "A" and B" supra, petitioner Francis Dashnau is not liable to a penalty under section 685(g) of the Tax Law.

D. That the petition of Francis Dashnau is granted and the Notice of Deficiency issued July 31, 1978 is cancelled.

DATED: Albany, New York

OCT 02 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
SHIRLEY DASHNAU	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Years	:	
1975, 1976 and 1977.	:	

Petitioner, Shirley Dashnau, P.O. Box 14, Oswego, New York 13126, 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, 1976 and 1977 (File No. 24943).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, 333 East Washington Street, Syracuse, New York, on December 8, 1980 at 1:15 P.M. Petitioner, Shirley Dashnau, appeared by Francis Dashnau. The Audit Division appeared by Ralph J. Vecchio, Esq. (Paul A. Lefebvre, Esq., of counsel).

ISSUE

Whether petitioner was a responsible person required to collect, truthfully account for and pay over New York State withholding taxes of County Cleaners of Fulton, Inc. for the years 1975, 1976 and 1977.

FINDINGS OF FACT

1. On July 31, 1978, the Audit Division issued both a Statement of Deficiency and a Notice of Deficiency against petitioner, Shirley Dashnau, imposing penalties equal to the amount of New York State withholding taxes due from County Cleaners of Fulton, Inc. (hereinafter "County") for the years 1975 through 1977. This was done on the grounds that she was a person required to

collect, truthfully account for and pay over said taxes, and that she willfully failed to do so.

2. The Audit Division ascertained that the petitioner was a responsible corporate officer since its records indicated that she was listed as treasurer on the New York State corporate tax return of County filed for the year 1975.

3. Petitioner was not listed as an officer or stockholder on the New York State Corporate Tax Return of County filed for the year 1976.

4. Petitioner Shirley Dashnau, worked as a laundress for County. Petitioner became treasurer of County Cleaners of Fulton, Inc. in 1972. As treasurer the petitioner continued her work as a laundress, but occasionally signed company documents as ordered by the owner of County, Charles N. Bohnsack. She had no authority to designate which creditors received payment. The payment of creditors was dictated by Charles N. Bohnsack.

5. In May 1975, upon learning the Federal taxes had not been paid, the petitioner's husband, Francis Dashnau, ordered the bookkeeper to pay the Internal Revenue Service. This caused a rift between the petitioner's husband and the owner Charles N. Bohnsack which lead to the petitioner, Shirley Dashnau's resignation as treasurer on June 20, 1975. However, petitioner retained her position as a laundress.

CONCLUSIONS OF LAW

A. That during the tax period January 1, 1975 through June 20, 1975 although petitioner was an officer of the corporation, she was not a person as defined by section 685(n) of the Tax Law who was under a duty to collect, truthfully account for and pay over withholding taxes with respect to County Cleaners of Fulton, Inc. (See Matter of the Petition of Nicholas Ragone, State Tax Commission, October 14, 1980).

B. That during the period June 21, 1975 through December 31, 1977 petitioner was not a person as defined by section 685(n) of the Tax Law as she remained with the corporation only as an employee. She was not under a duty to collect, truthfully account for and pay over withholding taxes with respect to County Cleaners of Fulton, Inc.

C. That in accordance with Conclusions of Law "A" and "B" supra, petitioner Shirley Dashnau is not liable to a penalty under section 685(g) of the Tax Law.

D. That the petition of Shirley Dashnau is granted and the Notice of Deficiency issued July 31, 1978 is cancelled.

DATED: Albany, New York

OCT 02 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER