

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Szolem Engelhardt :
a/k/a Sholem Engelhardt :
: 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 & 1975.

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 Szolem Engelhardt, a/k/a Sholem Engelhardt the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

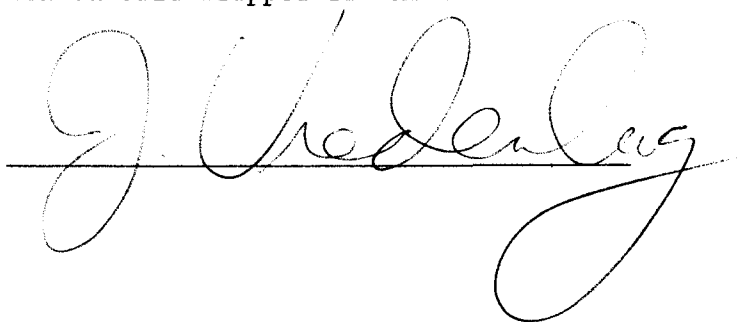
Szolem Engelhardt
a/k/a Sholem Engelhardt
921-45th St.
Brooklyn, NY 11219

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.





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of

Szolem Engelhardt :
a/k/a Sholem Engelhardt :

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 & 1975

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 Shlomo Aaron Belis the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Shlomo Aaron Belis
150 Broadway, Rm. 405
New York, NY 10038

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
2nd day of October, 1981.

Cornie A. Hagelund

J. Vredenburg

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

October 2, 1981

Szolem Engelhardt
a/k/a Sholem Engelhardt
921-45th St.
Brooklyn, NY 11219

Dear Mr. Engelhardt:

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
Shlomo Aaron Belis
150 Broadway, Rm. 405
New York, NY 10038
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
SZOLEM ENGELHARDT	:	DECISION
a/k/a SHOLEM ENGELHARDT	:	
	:	
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article	:	
22 of the Tax Law for the Years 1974 and	:	
1975.	:	

Petitioner, Szolem Engelhardt, 921 45th Street, Brooklyn, New York 11219, 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 and 1975 (File No. 21948).

On March 19, 1981, petitioner advised the State Tax Commission, in writing, that he desired to waive a small claims hearing and to submit the case to the State Tax Commission, based on the entire record contained in the file.

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 Milinari Originals, Inc.

FINDINGS OF FACT

1. Milinari Originals, Inc. (hereinafter Milinari), 115 West 30th Street, 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, 1974 to December 31, 1974	\$1,158.85
January 1, 1975 to December 31, 1975	1,016.78
Total	<u>\$2,175.63</u>

2. On January 30, 1978, the Audit Division issued a Statement of Deficiency in conjunction with a Notice of Deficiency against petitioner, Szolem Engelhardt, 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 Milinari. 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. Milinari, a handbag manufacturer, was formed in 1970 by petitioner, Mr. Harold Braun and Mr. Neil Ross. Each party was an officer and stockholder. Mr. Ross being president while petitioner held the office of treasurer.

4. Petitioner maintained that Mr. Ross controlled the operation of Milinari and was responsible for hiring and firing, paying all bills, keeping the books and filing tax returns. This is evidenced by supporting affidavits submitted by Milinari's accountant and bookkeeper. Petitioner contended that his own duties during the years at issue related solely to supervising the manufacturing operation.

5. In June 1974, petitioner suffered a heart attack. After recuperating for approximately seven weeks he returned to Milinari on a part time basis.

6. On May 29, 1975, petitioner transferred his interest in Milinari to Mr. Ross for one dollar. He contended that as a result of such transfer Mr. Ross assumed all the liabilities of Milinari.

7. Two reconciliations of personal income tax withheld submitted by Milinari for the periods at issue were signed by Mr. Ross as president.

8. Petitioner was authorized to sign checks of Milinari.

CONCLUSIONS OF LAW

A. That petitioner, Szolem Engelhardt, has failed to sustain his burden of proof required pursuant to section 689(e) of the Tax Law to show that he was not a person required to collect, truthfully account for and pay over the personal income taxes withheld from the employees of Milinari Originals, Inc. for the period January 1, 1974 through May 29, 1975. Accordingly, he is liable for a penalty equal to the taxes withheld and not paid over to the State for such period pursuant to section 685(g) of the Tax law.

B. That for period May 30, 1975 through December 31, 1975, petitioner was not a person required to collect, truthfully account for and pay over the personal income taxes withheld from the employees of Milinari Originals, Inc. Accordingly, he is not subject to the penalty imposed pursuant to section 685(g) of the Tax Law for such period.


C. That the petition of Szolem Engelhardt, a/k/a Sholem Engelhardt is granted to the extent provided in Conclusion of Law "B", supra and that said petition is, in all other respects, denied.

D. That the Audit Division is hereby directed to modify the Notice of Deficiency dated January 30, 1978 to be consistent with the decision rendered herein.

DATED: Albany, New York

OCT 02 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER