

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :

of
C. Robert Fine :

: 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 :
1969 - 1971.

State of New York
County of Albany

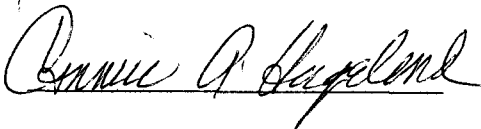
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 3rd day of July, 1981, he served the within notice of Decision by certified mail upon C. Robert Fine, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

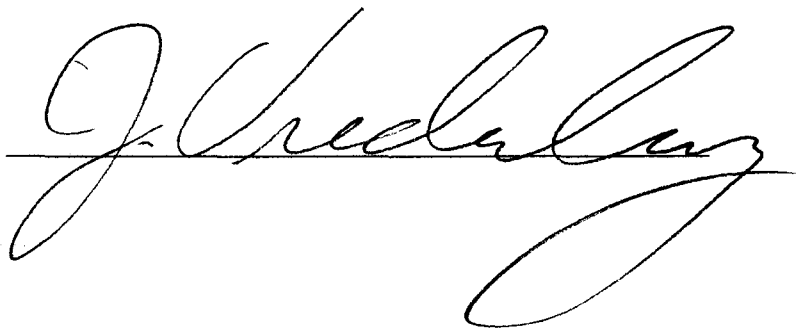
C. Robert Fine
570 North St.
Harrison, NY 10528

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
3rd day of July, 1981.


Emma A. Hagelund


Jay Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

C. Robert Fine :

: 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 :
1969 - 1971.

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 3rd day of July, 1981, he served the within notice of Decision by certified mail upon Stanley A. Ross the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Stanley A. Ross
Edward Isaacs & Co.
380 Madison Ave.
New York, NY 10017

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
3rd day of July, 1981.

Annice R. Hagelund

J. Vredenburg

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

July 3, 1981

C. Robert Fine
570 North St.
Harrison, NY 10528

Dear Mr. Fine:

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
Stanley A. Ross
Edward Isaacs & Co.
380 Madison Ave.
New York, NY 10017
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
C. ROBERT FINE	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax Under Article 22	:	
of the Tax Law for the Years 1969 through 1971.	:	

Petitioner, C. Robert Fine, 570 North Street, Harrison, New York 10528, 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 1969 through 1971 (File No. 18274).

A formal hearing was held before Robert A. Couze, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on November 17, 1980 at 9:45 A.M. Petitioner appeared by Edward Isaacs & Co., Certified Public Accountants, (Stanley Ross, Esq., of counsel). The Audit Division appeared by Ralph J. Vecchio, Esq., (Angelo Scopellito, Esq., of counsel).

ISSUES

I. Whether petitioner, C. Robert Fine, was a person required to collect, truthfully account for, and pay over withholding taxes due from Vidcom Electronics, Inc. for the years 1969, 1970 and 1971.

II. Whether the Notice of Deficiency is barred by the statute of limitations.

FINDINGS OF FACT

1. On April 10, 1972, the Audit Division issued a Notice of Deficiency and a Statement of Deficiency against petitioner in the amount of \$14,981.99 for the tax years 1969, 1970 and 1971. The Statement of Deficiency, in effect,

asserted petitioner was a person required to collect, truthfully account for, and pay over withholding taxes due from Vidcom Electronics, Inc. ("Vidcom") for the years 1969, 1970 and 1971 pursuant to the provisions of subsections (g) and (n) of section 685 New York Tax Law.

2. The aforementioned Statement of Deficiency further asserted the liability for the several withholding periods as follows:

"December 1 - December 31, 1969	\$ 6,019.34
January 1 - February 28, and	
May 16 to July 22, 1970	\$ 8,422.65
February 1 to February 9, 1971	540.00
Total Due	<u>\$14,981.99,,</u>

3. Subsequent to the issuance of the Notice of Deficiency and the Statement of Deficiency, \$2,558.00 of the asserted liability was paid; thus only a balance of \$12,423.99 remains in issue. (There is no evidence as to who made the payment; however, the Audit Division has agreed that the reduction is in order.)

4. Vidcom was a corporation engaged in the operation of a recording studio and in the manufacturing of prerecorded tapes and cassettes. It commenced bankruptcy proceedings in the United States District Court, Southern District of New York (Index No. 70-B-552) on June 30, 1970 before the Honorable Roy Babitt. The Trustee in Bankruptcy was one Stanley Tulchin. The Trustee's final report and account was filed September 26, 1975.

5. Petitioner, C. Robert Fine, was the President-Treasurer and principal shareholder of Vidcom and one Murray Oppenheim, an attorney, was its financial officer.

6. Petitioner's duties were primarily operational, i.e., he was Vidcom's engineering, recording and research and development specialist. He had no

responsibility in the financial area, nor in the everyday bookkeeping, accounting and legal problems entailed in running the business.

7. Murray Oppenheim's duties were primary responsibility for all of Vidcom's financial operations, including its day-to-day business, its accounting operations, the issuance of all its checks and the payment of all of its debts, including all taxes.

8. During the course of Vidcom's normal business day, Mr. Oppenheim was not always available; therefore, on those occasions, as a matter of convenience, one George Piros, its Vice President-Chief Engineer, had the responsibility to sign payroll checks.

9. Petitioner had check signing powers and, as a matter of urgency and not routinely, did sign some checks for telephone bills, rent and once or twice the payroll when other signatories were not available. He never signed any checks for taxes nor did he ever sign any tax returns.

10. Vidcom's other check signing signatories were one Bernard Bass and one Arthur Berkow.

11. Commencing June 30, 1970, the Trustee in the Bankruptcy was the only party that could authorize the issuance of any checks and/or the payment of any bills on behalf of Vidcom.

12. All of Vidcom's Federal withholding deficiency asserted against petitioner was for the period until June 30, 1970. The Federal withholding deficiency subsequent to June 30, 1970 was asserted against the Trustee in Bankruptcy.

13. Petitioner's counsel in maintaining that the Notice of Deficiency herein was barred by the statute of limitations stated as part of his legal argument:

"...the petitioner sees no reason why if an assessment was issued in 1972, why it waited until the taxpayer repeatedly requested a resolution in 1978, which is the first time the State of New York held a hearing, six years later, at which time they were not able to present any evidence at all as to how they arrived at the figures. The taxpayer had requested the information because no one had been able to show the taxpayer or anyone else how they got \$15,000.00 for an assessment."

14. Disregarding the issue of whether he was or was not liable for the penalty at issue herein, petitioner failed to offer any evidence as to what the assessment should have been.

15. Against the advice of his attorney, petitioner assumed and compromised all the Vidcom's Federal tax liabilities, not as any admission of guilt, but because he was willing to go ahead and try to pay such liabilities.

16. Petitioner in effect testified that he was ultimately the officer liable for Vidcom. (See page 20, transcript of testimony)

CONCLUSIONS OF LAW

A. The Notice of Deficiency, herein, is not barred by the statute of limitations (Section 683(c) Tax Law).

B. That petitioner failed to sustain his burden of proving the asserted Notice of Deficiency and Statement of Deficiency was excessive (Section 689(e) Tax Law).

C. That section 685(g) of the Tax Law provides that any person required to collect, truthfully account for, and pay over personal income tax, who willfully fails to collect such tax or truthfully account for and pay over such tax or willfully attempts in any manner to evade or defeat the tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty equal to the total amount of the tax evaded, or not collected, or not accounted for and paid over.

D. That section 685(n) of the Tax Law defines the word "person", for the purpose of section 685(g), and reads as follows:

"For purposes of subsections (g) ...the term person includes an individual, corporation or partnership or an officer or employee of any corporation (including a dissolved corporation), or a member or employee of any partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs."

E. That as a general proposition, the president of a corporation is its chief executive officer and while he may delegate some of his duties and responsibilities, he nevertheless remains responsible for the operation of the corporation; the petitioner was the president and principal stock holder of the corporation herein. (See Finding of Fact "16").

F. That petitioner was a person required to collect, truthfully account for, and pay over withholding taxes due from Vidcom Electronics, Inc. only for the period December 1, 1969 to June 30, 1970. Subsequent to June 30, 1970, the proper responsible party was the Trustee in Bankruptcy.

G. That in view of the foregoing, the petition herein is denied and the Notice of Deficiency is sustained insofar as is consistent with Conclusion of Law "F", above, i.e., petitioner is only liable for the penalty for the period December 1, 1969 to June 30, 1970, less the sum determined to have been paid in Finding of Fact "3", above.

DATED: Albany, New York

JUL 03 1981

STATE TAX COMMISSION
James G. Tully
PRESIDENT
Thomas D. G. L.
COMMISSIONER
Frank R. Koenig
COMMISSIONER