

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Gary Frechter :  
: 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 :  
1973, 1975 & 1976. :

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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 14th day of August, 1981, he served the within notice of Decision by certified mail upon Gary Frechter, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Gary Frechter  
70 W. Olive St.  
Long Beach, NY 11561

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  
14th day of August, 1981.

Carmie A. Haglund

J. Vredenburg

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

August 14, 1981

Gary Frechter  
70 W. Olive St.  
Long Beach, NY 11561

Dear Mr. Frechter:

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

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In the Matter of the Petition	:	
	:	
of	:	
	:	
GARY FRECHTER	:	DECISION
	:	
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article	:	
22 of the Tax Law for the Years 1973, 1975	:	
and 1976.	:	

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Petitioner, Gary Frechter, 70 W. Olive Street, Long Beach, New York 11561, 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 1973, 1975 and 1976 (File No. 21950).

A small claims hearing was held before William Valcarcel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on December 10, 1980 at 9:15 A.M. Petitioner, Gary Frechter, appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (A. Scopellito, Esq., of counsel).

ISSUE

Whether petitioner is subject to a penalty under section 685(g) of the Tax Law.

FINDINGS OF FACT

1. Prescription Health Aids, Inc. also known as Cura Drugs, Inc. (Cura Drugs) failed to remit personal income taxes withheld from its employees as follows:

<u>WITHHOLDING TAX PERIOD</u>	<u>AMOUNT</u>
8/1/73 - 11/31/73	\$167.24
4/1/75 - 06/30/75	91.30
7/1/75 - 12/31/75	217.30
1/1/76 - 12/15/76	369.20
Total	<u>\$845.04</u>

2. On January 30, 1978, the Audit Division issued a Notice of Deficiency for \$845.04 along with a Statement of Deficiency on which a penalty under section 685(g) of the Tax Law was imposed against petitioner, as a person who willfully failed to collect, truthfully account for, and pay over personal income taxes withheld by Cura Drugs. On August 28, 1979 the Audit Division conceded the penalty attributable to the periods 8/1/73 through 11/31/73 and 4/1/75 through 6/30/75 which reduced the deficiency to \$586.50.

3. Petitioner, Gary Frechter, contended that he merely acted as a guarantor to the suppliers of Cura Drugs, and as a creditor of Cura Drugs who lent them money to assist with its financial difficulties. Petitioner further contended that he acted as a guarantor and creditor of Cura Drugs without the existence of a written contract and without any voice or authority in the activities of its business operations.

4. Petitioner was a shareholder and vice-president of Cura Drugs, but was not certain whether he ever signed any checks, or whether he had any authority to do so. Petitioner contended that he operated his own business on a full time basis and didn't have the time to get involved in the day to day operations of Cura Drugs, but did volunteer advice from time to time based on his own business experience.

5. In December, 1976 Cura Drugs filed for bankruptcy. Although petitioner contended that Cura Drugs owed him an amount in excess of \$30,000.00, he was not listed as a creditor in the bankruptcy proceeding.

CONCLUSIONS OF LAW

A. That petitioner Gary Frechter has failed to submit any credible evidence and has failed to sustain the burden of proof required by section 689(e) of the Tax Law in establishing that as a stockholder and corporate officer, he was not a "person" as defined in section 685(n) of the Tax Law.

B. That petitioner, Gary Frechter, was a "person" as defined in section 685(n) of the Tax Law who willfully failed to collect, or truthfully account for and pay over personal income taxes of \$586.50 withheld from the employees of Prescription Health Aids, Inc. a/k/a Cura Drugs, Inc. during the periods 7/1/75 through 12/31/75 and 1/1/76 through 12/15/76, and is subject to a penalty of \$586.50 in accordance with the meaning and intent of section 685(g) of the Tax Law.

C. That the petition of Gary Frechter is granted to the extent that the penalty imposed under section 685(g) of the Tax Law is reduced from \$845.04 to \$586.50.


D. That the Audit Division is hereby directed to modify accordingly the Notice of Deficiency issued January 30, 1978; and that, except as so granted, the petition is in all other respects denied.


DATED: Albany, New York

AUG 14 1981

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER