

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
Guy Greco

:

:

: 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 Year :
1972

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 15th day of May, 1981, he served the within notice of Decision by certified mail upon Guy Greco, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Guy Greco
211 E. 60th St.
New York, NY 10022

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
15th day of May, 1981.

Annunzio A. Magillund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Guy Greco :
: 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 Year 1972

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 15th day of May, 1981, he served the within notice of Decision by certified mail upon Jack H. Dorfman the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. Jack H. Dorfman
295 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
15th day of May, 1981.

Annie P. Bagelund

J. Vredenburg

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

May 15, 1981

Guy Greco
211 E. 60th St.
New York, NY 10022

Dear Mr. Greco:

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
Jack H. Dorfman
295 Madison Ave.
New York, NY 10017
Taxing Bureau's Representative

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
GUY GRECO	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Year	:	
1972.	:	

Petitioner, Guy Greco, 211 East 60th Street, New York, New York 10022, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1972 (File No. 19660).

A small claims hearing was held before Samuel Levy, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 27, 1980 at 9:15 A.M. Petitioner appeared by Jack H. Dorfman, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Angelo Scopellito, Esq., of counsel).

ISSUE

Whether petitioner was a person required to collect, truthfully account for and pay over withholding taxes due and unpaid from Guy Greco, Incorporated for 1972.

FINDINGS OF FACT

1. On February 28, 1977, the Audit Division issued a Notice of Deficiency and Statement of Deficiency against petitioner, Guy Greco, imposing a penalty against him equal to the amount of unpaid New York State withholding taxes due from Guy Greco, Incorporated, in the amount of \$1,135.80 for 1972. The penalty was issued on the basis that petitioner was a person required to collect,

truthfully account for and pay over said taxes and that he willfully failed to do so.

2. Guy Greco, Incorporated ("Corporation"), incorporated under the laws of New York, was engaged in the manufacture and sale of men's hairpieces. The founders of the corporation were petitioner Guy Greco and John Richard Finocchio, who held the offices of president and secretary, respectively. Each of the incorporators held a fifty (50) percent interest of the outstanding corporate stock and each drew a salary.

3. Petitioner arrived in the United States from Italy sometime in 1956. He immediately obtained employment in a factory, which employed, in the main, non-English speaking personnel. Because of the long hours of work required of petitioner to sustain himself, he was unable to attend public schools. As a result of his work environment and lack of education, petitioner was unable to effectively speak and/or write English.

4. During the year 1966 or 1967, petitioner joined with Mr. Finocchio in the formation of the corporation.

Petitioner's primary function for the corporation was that of a designer of men's wigs and supervisor of corporate employees who executed his designs.

Mr. Finocchio assumed administrative control over all corporate activities.

4. Mr. Finocchio did not permit petitioner to be responsible for, nor participate in the corporation's general office work. When petitioner sought to obtain financial information from Mr. Finocchio, he received evasive and conflicting answers from him.

The petitioner was prevented by Mr. Finocchio from having access to the corporate books and records, as they were under the latter's sole control.

Petitioner was unable to obtain information from the bookkeeper who was Mr. Finocchio's mother-in-law.

Petitioner had no control over or access to the collection of monies from the customers. The collection of money was handled by Mr. Finocchio, his mother-in-law or his wife, who was also employed by the corporation.

6. Petitioner had no authority to hire and fire employees, he did not prepare the payroll, nor was he responsible for the preparation of any of the various Federal and State tax forms required to be filed by the corporation. These activities were under the direct control and supervision of Mr. Finocchio.

7. The corporation's accountant and attorney were hired by Mr. Finocchio.

8. Petitioner was a required signatory on all corporate checks.

9. Petitioner was unable to alter and/or change existing corporate conditions because of the limitations placed on him by his inability to effectively read and/or speak English. Petitioner signed whatever documents and checks were placed before him by Mr. Finocchio for his signature.

Petitioner placed his reliance on Mr. Finocchio based on advice of his family.

10. Late in 1971 or early in 1972, petitioner sold some of his personal assets and borrowed money from a loan company in order to obtain \$7,000.00 which was paid to the Federal Government in order to avoid having the business closed.

11. In April of 1972, the business was moved from its original location to a new location in order to reduce the expenditures for rent.

12. A New York State reconciliation of personal income tax withheld (Form IT-203) filed by Guy Greco Inc. for 1972 indicated that taxes were withheld from employees every month through and including September of 1972.

13. A subpoena duces tecum, dated June 5, 1980, in the Matter of the State of New York against Guy Greco (petitioner herein) was served on Mr. Finocchio commanding that he appear before the State Tax Commission on June 27, 1980 and demanding that "you bring with you, and produce...all books, records, ledgers, payroll records, bank statements, cancelled checks, withholding tax records of 'Guy Greco, Inc.' for the year 1972." Mr. Finocchio did not appear nor did he submit the required data.

CONCLUSIONS OF LAW

A. That petitioner should have become aware that possible problems existed in the timely payment of taxes when it became necessary for him to sell personal assets and borrow money to pay a federal tax liability. Although petitioner was denied access to the books and records of the business, he indicated his acceptance of this situation by continuing to sign corporate checks and documents at the request of Mr. Finocchio.

B. That although petitioner, Guy Greco, may not have known that New York State personal income taxes withheld from the employees of Guy Greco, Inc. were not being paid over to New York State, he should have made himself aware of the situation.

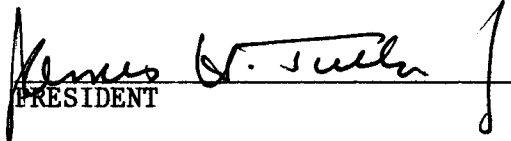
C. That petitioner, Guy Greco, as an officer and shareholder of Guy Greco, Inc., was a person required to collect, truthfully account for and pay over unpaid New York State personal income taxes withheld by said corporation within the meaning of section 685(n) of the Tax Law. Accordingly, petitioner is subject to a penalty in an amount equal to the unpaid withholding taxes for Guy Greco, Inc. under section 685(g) of the Tax Law.


D. That the petition of Guy Greco is denied and the Notice of Deficiency issued February 28, 1977 is sustained.

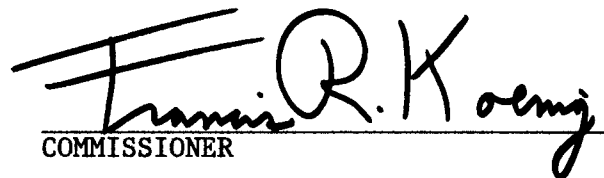
DATED: Albany, New York

STATE TAX COMMISSION

MAY 15 1981


PRESIDENT


COMMISSIONER


COMMISSIONER