

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
Arnold Keiler

:

:

: 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 :
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 5th day of June, 1981, he served the within notice of Decision by certified mail upon Arnold Keiler, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Arnold Keiler
150 West End Ave.
New York, NY 10023

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
5th day of June, 1981.

Connie A. Haglund

J. Vredenburg

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

June 5, 1981

Arnold Keiler
150 West End Ave.
New York, NY 10023

Dear Mr. Keiler:

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

In the Matter of the Petition
of
ARNOLD KEILER
for Redetermination of a Deficiency or for
Refund of Personal Income Tax under Article
22 of the Tax Law for the Year 1971.

DECISION

Petitioner, Arnold Keiler, 150 West End Avenue, New York, New York 10023, 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 1971 (File No. 23962).

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 October 9, 1980 at 10:45 A.M. Petitioner, Arnold Keiler, 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 as a person who willfully failed to collect, truthfully account for and pay over personal income taxes withheld from the employees of Juljon Realty Corporation.

FINDINGS OF FACT

1. Juljon Realty Corporation (Juljon) failed to remit \$248.00 in personal income taxes withheld from its employees during the year 1971.
2. On July 31, 1978, the Audit Division issued a Notice of Deficiency for \$248.00, along with a Statement of Deficiency which explained that petitioner, Arnold Keiler, was held subject to a penalty under section 685(g) of the Tax

Law, as a person who willfully failed to collect, truthfully account for and pay over personal income taxes withheld from the employees of Juljon.

3. Petitioner, Arnold Keiler, entered into a written agreement on September 1, 1960 with two other individuals, whereby he agreed to participate in the organization of Juljon Realty Corporation. In addition, the written agreement provided that petitioner owned one-third of all stock and was entitled to one-third of all the income and expenses of Juljon. Petitioner was a licensed real estate broker and vice-president of Juljon.

4. On September 1, 1961, petitioner signed an agreement contract with Juljon as manager of its office and was required to devote his full time and efforts to "the management, superintendence, and improvement" of Juljon. However, petitioner contended that he was not involved with Juljon's payroll or with the withholding of personal income taxes. Petitioner also contended that he had the authority to sign checks, but only did so upon instructions from the other corporate officers.

5. In December 1973, petitioner resigned as vice-president and manager, and returned his stockholdings to Juljon in anticipation of the corporation's liquidation.

CONCLUSIONS OF LAW

A. That petitioner, Arnold Keiler, a stockholder, corporate officer and manager of Juljon Realty Corporation was a "person" as defined in section 685(n) of the Tax Law, who willfully failed to collect, truthfully account for and pay over personal income taxes due of \$248.00 during the year 1971.

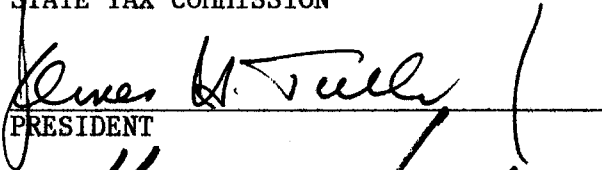
B. That petitioner, Arnold Keiler, is subject to a penalty of \$248.00 in accordance with the meaning and intent of section 685(g) of the Tax Law.

C. That the petition of Arnold Keiler is denied and the Notice of Deficiency issued July 31, 1978 is sustained, together with such interest as may be lawfully owing.

DATED: Albany, New York

JUN 5 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER