

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Bernard Koslow :
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, 1974, 1976 & 1977. :

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 30th day of October, 1981, he served the within notice of Decision by certified mail upon Bernard Koslow, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Bernard Koslow
240 E. 27th St.
New York, NY 10016

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
30th day of October, 1981.

Carmie A. Hagelund

J. Vredenburg

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

October 30, 1981

Bernard Koslow
240 E. 27th St.
New York, NY 10016

Dear Mr. Koslow:

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
BERNARD KOSLOW
for Redetermination of a Deficiency or for
Refund of Personal Income Tax under Article 22
of the Tax Law for the Years 1973, 1974, 1976
and 1977.

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DECISION

Petitioner, Bernard Koslow, 1750 Alexis Road, Merrick, New York 11566, 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, 1974, 1976 and 1977 (File No. 21842).

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 1:15 P.M. Petitioner, Bernard Koslow, appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (Abraham Schwartz, Esq., of counsel).

ISSUE

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

FINDINGS OF FACT

1. On April 10, 1978, the Audit Division issued a Notice of Deficiency for \$1,845.10, along with a Statement of Deficiency which indicated that petitioner, Bernard Koslow, was being held subject to a penalty pursuant to section 685(g) of the Tax Law as a person who willfully failed to collect or truthfully account for and pay over personal income taxes withheld from the

employees of "Bernardo's Meat Packing Corp., d/b/a K & R Kosher Meats Incorp." The withholding taxes due and not paid were determined as follows:

<u>DATES</u>	<u>AMOUNTS</u>
3/1/73 - 6/30/73	\$288.90
1/1/74 - 12/31/74	907.60
1/1/76 - 6/30/76	337.20
7/1/76 - 12/31/76	240.40
1/1/77 - 4/18/77	71.00

Subsequent to the issuance of the deficiency, the Audit Division determined that the withholding taxes shown to be due of \$288.90 and \$907.60, supra, were previously paid. These amounts were conceded by the Audit Division which reduced the total deficiency at issue to \$648.60.

2. Petitioner, Bernard Koslow, contended that the Notice of Deficiency and the Statement of Deficiency were erroneous and pointed out that Bernardo's Meat Packing Corp. (hereinafter "Bernardo's") was not doing business as K & R Kosher Meats, Incorp. (hereinafter "K & R"). Bernardo's and K & R were two separate and distinct corporate businesses. In addition, petitioner contended that all withholding taxes for both corporations were collected, accounted for and paid.

3. Petitioner, Bernard Koslow, was the sole stockholder and principal corporate officer for K & R, a butcher shop in Howard Beach, New York. On May 10, 1976, the butcher shop was sold and K & R terminated its activities. Wage and tax statements filed by K & R for the year 1976 indicated that \$337.20 in New York State personal income taxes were withheld. However, the Audit Division, as well as petitioner, did not have any records or documentary evidence indicating that the \$337.20 was paid.

4. Petitioner, Bernard Koslow, was the sole stockholder and principal corporate officer for Bernardo's located in Ronkonkoma, New York, which he

operated from October 7, 1976 to February, 1977. Bernardo's filed and petitioner signed an employer's withholding tax return (IT-2101) for the period July 1, 1976 to December 31, 1976 indicating that \$240.40 in personal income taxes were withheld and remitted. However, the Audit Division, as well as petitioner, did not have any records or documentary evidence indicating that the \$240.40 was paid.

5. Petitioner testified that Bernardo's had a payroll until February 1977. However, the Audit Division, as well as petitioner, did not have any records or documentary evidence indicating that employer's tax returns were filed, or that withholding taxes were paid. Accordingly, the Audit Division estimated that \$71.00 in withholding taxes was due and owing for the payroll period January 1, 1977 to April 18, 1977.

CONCLUSIONS OF LAW

A. That petitioner, Bernard Koslow, has failed to sustain the burden of proof as required by section 689(e) of the Tax Law in establishing that the personal income taxes withheld from the employees of K & R Kosher Meats, Incorp., during January 1, 1976 to June 30, 1976 and from the employees of Bernardo's Meat Packing Corp. during October 7, 1976 to February 1977 were truthfully accounted for and paid over to the Audit Division.

B. That petitioner, Bernard Koslow, is subject to a penalty of \$648.60 in accordance with the meaning and intent of section 685(g) of the Tax Law.

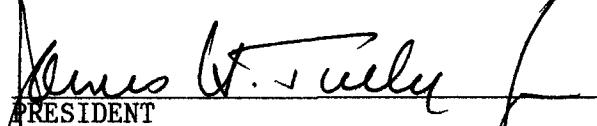
C. That the petition of Bernard Koslow is granted to the extent that the penalty imposed under section 685(g) of the Tax Law is reduced from \$1,845.10 to \$648.60.

D. That the Audit Division is hereby directed to modify accordingly the Notice of Deficiency issued April 10, 1978; and that except as so granted, the petition is in all other respects denied.

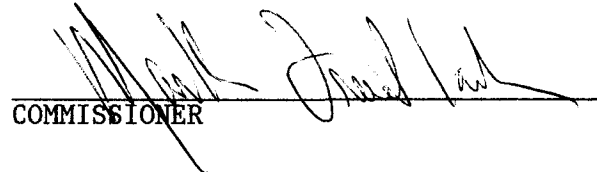
DATED: Albany, New York

OCT 30 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER