

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Hans Kracauer :
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 :
1975.

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 2nd day of October, 1981, he served the within notice of Decision by certified mail upon Hans Kracauer, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Hans Kracauer
410 S. Hobart Blvd.
Los Angeles, CA 90020

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
2nd day of October, 1981.

Carmie A. Hagelund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Hans Kracauer :

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 :
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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 2nd day of October, 1981, he served the within notice of Decision by certified mail upon Stanley Priskie 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 Priskie
Konigsberg, Wolf & Co.
200 Madison Ave.
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 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
2nd day of October, 1981.

Bernie A. Hageland

J. Vredenburg

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

October 2, 1981

Hans Kracauer
410 S. Hobart Blvd.
Los Angeles, CA 90020

Dear Mr. Kracauer:

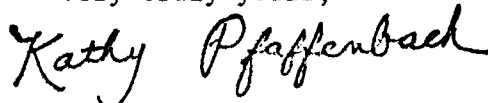
Please take notice of the Decision of the State Tax Commission enclosed herewith.

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,

A handwritten signature in cursive script that reads "Kathy Pfaffenbach".

STATE TAX COMMISSION

cc: Petitioner's Representative
Stanley Priskie
Konigsberg, Wolf & Co.
200 Madison Ave.
New York, NY 10016
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
HANS KRACAUER	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1975.	:	

Petitioner, Hans Kracauer, 410 South Hobart Boulevard, Los Angeles, California 90020, 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 1975 (File No. 24232).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on March 25, 1981 at 9:15 A.M. Petitioner appeared by Stanley Priskie, CPA. The Audit Division appeared by Ralph J. Vecchio, Esq. (Irwin Levy, Esq., of counsel).

ISSUE

Whether petitioner was a person required to collect, truthfully account for and pay over New York State withholding taxes of Ron Marvin, Inc. for 1975.

FINDINGS OF FACT

1. On August 28, 1978, the Audit Division issued a Notice of Deficiency against petitioner Hans Kracauer, imposing a penalty of \$7,689.00 which was equal to the amount of New York State withholding taxes of Ron Marvin, Inc. and which were due and unpaid for the year 1975.
2. Petitioner, Hans Kracauer, was an officer, director and shareholder of Ron Marvin, Inc., an advertising agency. His duties were in a creative capacity

in preparing advertising copy and writing for the corporation. The company was not financially successful which led to petitioner's resignation and leaving the company and going to California. Petitioner's representative alleged that this occurred in "June, July or August" and that they were unable to locate Ron Marvin Chapman, who had the books and records in order to ascertain who signed the checks. Petitioner, who did not attend the hearing in person, insisted to his representative that he never signed checks and was not aware of any unpaid payroll taxes.

3. Form IT-2103, "New York State Income Tax Bureau - Reconciliation of Personal Income Tax Withheld" for Employers Filing Semi-Monthly, Monthly and Semi-Annual Returns for 1975, for the firm Kracauer & Marvin Advertising, Inc. was signed on January 30, 1976 by Ronald Marvin Chapman. A Notice and Demand for unpaid withholding tax due was issued to Ron Marvin, Inc. on October 22, 1976 for the calendar year 1975 in the amount of \$7,689.00 plus penalty and interest, for a total of \$10,866.31.

CONCLUSIONS OF LAW

A. That petitioner, Hans Kracauer, has not sustained the burden of proof required by section 689(e) of the Tax Law to establish that he was not a responsible person who willfully failed to collect, truthfully account for and pay over personal income taxes withheld by Ron Marvin, Inc., within the meaning and intent of subdivisions (g) and (n) of section 685 of the Tax Law.

B. That petitioner was a person required to collect, truthfully account for and pay over New York State withholding taxes due from Ron Marvin, Inc. and that he willfully failed to do so, in accordance with the meaning and intent of sections 685(g) and 685(n) of the Tax Law.

C. That the petition of Hans Kracauer is denied and the Notice of Deficiency issued August 28, 1978 in the sum of \$7,689.00, is sustained.

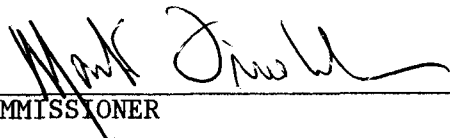
DATED: Albany, New York

OCT 02 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER