

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Jerome B. Likier :

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 1970. :

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 27th day of February, 1981, he served the within notice of Decision by certified mail upon Jerome B. Likier, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Jerome B. Likier
444 E. 81st St.
New York, NY 10028

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
27th day of February, 1981.

Connie P. Haglund

J. Vredenburg

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

February 27, 1981

Jerome B. Likier
444 E. 81st St.
New York, NY 10028

Dear Mr. Likier:

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	:	
	:	
JEROME B. LIKIER	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Year	:	
1970.	:	

Petitioner, Jerome B. Likier, 444 East 81st Street, New York, New York 10028, 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 1970 (File No. 19683).

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 September 30, 1980 at 2:45 P.M. Petitioner appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (Angelo Scopellito, Esq., of counsel).

ISSUE

Whether petitioner is subject to a penalty under section 685, subdivision (g) of the Tax Law, as a person who wilfully failed to collect, account for an pay over withholding tax due and owing from Scotco Communications Systems, Inc. (hereinafter "corporation") for 1970.

FINDINGS OF FACT

1. On March 28, 1977, the Audit Division issued a Notice of Deficiency and Statement of Deficiency against petitioner Jerome B. Likier, imposing a penalty against him equal to the amount of unpaid New York withholding taxes due and owing from corporation in the amount of \$1,511.13 for 1970. The penalty was issued on the ground that petitioner was a person required to

collect, truthfully account for and pay over taxes at issue, and that he wilfully failed to do so.

2. Petitioner, Jerome B. Likier, was employed by the corporation as a salesman of electronic equipment on or about March 20, 1970. Prior to joining the corporation, petitioner had been employed by Allstate Communications, Inc. and Riker Information Systems, Inc. in 1970.

3. Petitioner's principal duty was to meet with corporate customers who required specialty types of electronics equipment. Petitioner designed the required equipment and estimated the cost entailed in its manufacture. He would submit the estimated cost of manufacture to the corporate vice-president for his approval.

4. Petitioner's authority for 1970 did not extend to the financial and/or management policy of the corporation.

CONCLUSIONS OF LAW

A. That petitioner, Jerome B. Likier, was not a person required to collect, truthfully account for and pay over unpaid New York State personal income taxes withheld by Scotco Communications Systems, Inc., within the meaning of section 685(n) of the Tax Law. Accordingly, petitioner is not subject to a penalty in an amount equal to the unpaid withholding taxes for corporation under section 685(g) of the Tax Law.

B. That the petition of Jerome B. Likier is granted and the Notice of Deficiency issued March 28, 1977 is cancelled.

DATED: Albany, New York

FEB 27 1981

STATE TAX COMMISSION

PRESIDENT

COMMISSIONER

COMMISSIONER