

STATE TAX COMMISSION

: 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 :
1973.

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 Irving Lindner (Deceased), the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

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.

Connie R. Haglund

J. Hedberg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Irving Lindner (Deceased) :

: 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 :
1973

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 Ira J. Raab the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Ira J. Raab
375 Westwood Rd.
Woodmere, NY 11598

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.

Annex P Hageland

J. Vredenburg

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

October 2, 1981

Irving Lindner (Deceased)
c/o Ira J. Raab
375 Westwood Rd.
Woodmere, NY 11598

To the Executor:

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,
Kathy Pfaffenbach

STATE TAX COMMISSION

cc: Petitioner's Representative
Ira J. Raab
375 Westwood Rd.
Woodmere, NY 11598
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
IRVING LINDNER	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article	:	
22 of the Tax Law for the Year 1973.	:	

Petitioner, Irving Lindner, c/o Ira J. Raab, Esq., 375 Westwood Road, Woodmere, New York, 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 1973 (File No. 15956).

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 February 23, 1981 at 1:15 P.M. Petitioner Irving Lindner appeared by Ira J. Raab, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Andrew Habor and Michael Gitter, Esqs. of counsel).

ISSUES

- I. Whether petitioner is subject to a penalty under section 685(g) of the Tax Law.
- II. Whether the Law Bureau's failure to serve a timely answer to petitioner's perfected petition warrants relief.
- III. Whether a delay, if any, in the scheduling of this matter unduly prejudiced and adversely affected petitioner's position in this matter.

FINDINGS OF FACT

1. All Around Leather Ltd., a New York State corporation, (hereinafter "Corporation") withheld from its employees \$1,393.65 in personal income taxes

during the year 1973. On March 26, 1974 the Corporation remitted \$757.45 in withholding taxes for the quarter ending December 31, 1973.

2. On March 4, 1975 the Audit Division issued a Notice and Demand for Unpaid Withholding Tax Due against the Corporation for the balance of withholding taxes due of \$636.20 plus penalties and interest. The aforementioned Notice and Demand was not paid by the Corporation.

3. On June 28, 1976 the Audit Division issued a Notice of Deficiency for \$636.20 along with a Statement of Deficiency, on which a penalty under section 685(g) of the Tax Law was imposed against petitioner Irving Lindner as a person who willfully failed to collect or truthfully account for and pay over personal income taxes withheld from the employees of All Around Leather Ltd. during the year 1973.

4. Petitioner was employed by the corporation as its foreman when in July, 1973 the president and principal stockholder (hereinafter the "Principal") of the corporation was convicted of a crime and awaiting sentencing. At that time petitioner was given the authority to sign corporate checks which also required the signature of the Principal.

5. Sometime in mid-October, 1973, while the Principal was incarcerated, petitioner was given the corporate title of president and the authority to sign checks without the second signature of the Principal. However, petitioner continued to perform his duties as foreman and was not given any further authority or voice in the financial and operational function of the Corporation. The financial and operational functions of the Corporation remained with and were exercised by the Principal from prison through his accountant.

6. All personal income taxes withheld from the employees of the Corporation during October, November and December, 1973 were collected, accounted for and paid in the sum of \$757.45 on March 26, 1974.

7. Upon the Principal's release in April, 1974, petitioner resigned as a corporate officer and relinquished his authority to sign checks.

8. A Perfected Petition was received from petitioner on November 15, 1977 and answered by the Law Bureau on January 31, 1978. Petitioner's representative protested and argued that the Law Bureau's answer was not served within the time limit provided by 20 NYCRR 601.6(a)(1).

9. Petitioner's representative raised an issue regarding the delay in the scheduling of this hearing. A petition was received by the Secretary of the State Tax Commission on August 19, 1976. A small claims hearing was first scheduled for May 12, 1980. Petitioner Irving Lindner died in April, 1980. Petitioner's representative contended that petitioner's sworn testimony constituted vital evidence essential to petitioner's case. Therefore, he argued that since the aforementioned evidence was no longer available, the lengthy delay prejudiced petitioner's case and may have adversely affected petitioner's position in this matter.

CONCLUSIONS OF LAW

A. That petitioner Irving Lindner is not subject to a penalty for the year 1973 in accordance with the meaning and intent of section 685(g) of the Tax Law.

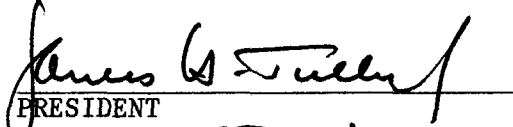
B. That paragraph "A" of this decision renders issues II and III moot.

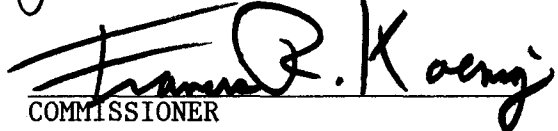
C. That the petition of Irving Lindner is granted and the Notice of Deficiency issued June 28, 1976 is cancelled.

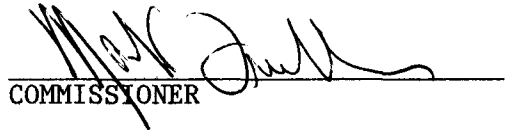
DATED: Albany, New York

OCT 02 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER