

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :

of

Herbert Maletz :

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

Herbert Maletz  
27 Tompkins Circle  
Staten Island, NY 10301

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 February, 1981.

Connie G. Hagelund

J. Vredenburg

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition  
of

Herbert Maletz

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 5th day of February, 1981, he served the within notice of Decision by certified mail upon Steven P. Howard the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. Steven P. Howard  
Holzka, Donahue, Kuhn & Howard  
358 St. Mark's Pl.  
Staten Island, NY 10301

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  
5th day of February, 1981.

*Cornelia A. Hagelund*

*Jay Vredenburg*

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

February 5, 1981

Herbert Maletz  
27 Tompkins Circle  
Staten Island, NY 10301

Dear Mr. Maletz:

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  
Steven P. Howard  
Holzka, Donahue, Kuhn & Howard  
358 St. Mark's Pl.  
Staten Island, NY 10301  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
HERBERT MALETZ	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Year	:	
1970.	:	

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Petitioner, Herbert Maletz, 27 Tompkins Circle, Staten Island, New York 10301, 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. 17375).

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 22, 1979 at 2:45 P.M. Petitioner, Herbert Maletz, appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (Samuel Freund, Esq., of counsel).

ISSUE

Whether petitioner, Herbert Maletz, 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 withholding taxes.

FINDINGS OF FACT

1. Compusec Data Corporation (hereinafter "Compusec") failed to pay over to the Income Tax Bureau \$2,493.78 in personal income taxes withheld from its employees during the period January 1, 1970 to September 30, 1970.

2. On September 25, 1972, the Income Tax Bureau issued a Notice of Deficiency for \$2,493.78, along with an explanatory Statement of Deficiency, imposing a penalty under section 685(g) of the Tax Law against petitioner, Herbert Maletz, as a person who willfully failed to collect, truthfully account for and pay over personal income taxes withheld by Compusec.

3. Petitioner, Herbert Maletz, was vice-president of Compusec in charge of computer operations during the year 1970. He was a minority stockholder owning approximately one percent of the total corporate stock.

4. Petitioner was given the authority to sign corporate checks, which required two signatures. Petitioner did not sign any corporate tax returns or participate in their preparation.

5. The president and treasurer of Compusec were both certified public accountants and were in charge of the administrative and financial functions of the corporation. Petitioner, Herbert Maletz, had no authority or voice in the financial and managerial functions of Compusec.

6. Petitioner was not aware of the corporation's financial difficulties until July, 1970, when Compusec moved to a new location and terminated most of its employees. Petitioner continued rendering services during July, August and September, 1970, but without receiving a salary or other compensation.

7. Petitioner was not given access to the books and records of Compusec and was not aware that personal income taxes withheld from its employees were not being remitted to the Income Tax Bureau.

#### CONCLUSIONS OF LAW

A. That petitioner, Herbert Maletz, was not a person, as defined under section 685(n) of the Tax Law, who willfully failed to collect and pay over personal income taxes withheld by Compusec Data Corporation during the year 1970.

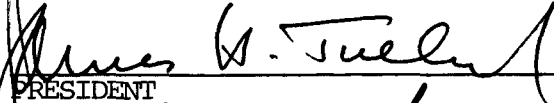
B. That petitioner, Herbert Maletz, is not subject to a penalty within the meaning and intent of section 685(g) of the Tax Law.

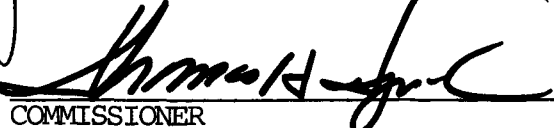
C. That the petition of Herbert Maletz is granted and the Notice of Deficiency issued September 25, 1972 is cancelled.

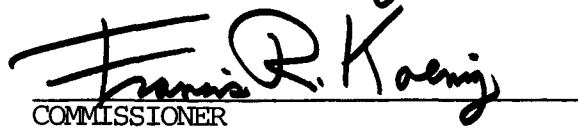
DATED: Albany, New York

FEB 05 1981

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER