

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Stanley Pacosz :
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 :
1972.

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 Stanley Pacosz, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Stanley Pacosz
495 Reserve Rd.
West Seneca, NY 14224

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.

Annice A. Hayward

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
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AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision :
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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 30th day of October, 1981, he served the within notice of Decision by certified mail upon Henry A. Orlowski the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Henry A. Orlowski
1330 Broadway
Buffalo, NY 14212

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
30th day of October, 1981.

Annex A. Haglund

J. Vredenburg

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

October 30, 1981

Stanley Pacosz
495 Reserve Rd.
West Seneca, NY 14224

Dear Mr. Pacosz:

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
Henry A. Orlowski
1330 Broadway
Buffalo, NY 14212
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
STANLEY PACOSZ	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1972.	:	

Petitioner, Stanley Pacosz, 495 Reserve Road, West Seneca, New York 14224, filed a petition for redetermination of a deficiency or for refund of personal income taxes under Article 22 of the Tax Law for the year 1972 (File No. 16275).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, 65 Court Street, Buffalo, New York, on January 28, 1981 at 9:15 A.M. Petitioner, Stanley Pacosz, appeared with Henry A. Orlowski, P.A. The Audit Division appeared by Ralph J. Vecchio, Esq. (Patricia L. Brumbaugh, Esq., of counsel).

ISSUE

Whether petitioner is required to pay a penalty with respect to the failure of ABC Book Bindery, Inc. to remit withholding tax during 1972.

FINDINGS OF FACT

1. On June 28, 1976, the Audit Division issued a Statement of Deficiency against petitioner, Stanley Pacosz, imposing a penalty equal to the amount of New York State withholding taxes due from ABC Book Bindery, Inc. for the period January 1, 1972 through December 31, 1972. This was done on the grounds that he was a person required to collect, truthfully account for and pay over said

taxes, and that he willfully failed to do so; therefore, a Notice of Deficiency was issued to him on June 28, 1976 for \$124.80.

2. During the period herein at issue, petitioner, Stanley Pacosz, was the person required to collect, truthfully account for and pay over the withholding taxes due from ABC Book Bindery, Inc., within the meaning of sections 685(g) and (n) of the Tax Law. The petitioner did not argue that he was not responsible but that there should be no penalty because he was the only employee of ABC Book Bindery, Inc. and he did not claim credit for any tax withheld on his personal income tax return for 1972.

3. Petitioner, Stanley Pacosz, was the only employee of ABC Book Bindery, Inc. during 1972 and had wages of \$5,720.00.

4. A Notice of Failure to File Form IT-2103, Employer's Reconciliation of New York State Personal Income Tax Withheld was filed with the Department of Taxation and Finance by ABC Book Bindery, Inc. Said Notice reported alleged payments made in June and December of 1972 of \$62.40 each on behalf of one employee.

5. On October 29, 1973 the New York State Tax Commission deposited a check from ABC Book Bindery, Inc. for \$62.40. This check, the petitioner contended, was collected by the Tax Compliance Bureau for withholding taxes for 1972. However, no documentary evidence was submitted to show that said payment was collected for withholding taxes for 1972.

6. Petitioner, Stanley Pacosz, filed a New York State Income Tax Return for 1972. On said return the petitioner did not claim withholding tax on the wages paid to him by ABC Book Bindery, Inc. The petitioner did pay personal income taxes on income received from ABC Book Bindery, Inc.

CONCLUSION OF LAW

- A. That section 676 of the Tax Law provides the following:

Employer's failure to withhold. If an employer fails to deduct and withhold tax as required and thereafter the tax against which such tax may be credit is paid, the tax so required to be deducted and withheld shall not be collected from the employer, but the employer shall not be relieved from liability for any penalties, interest, or additions to the tax otherwise applicable in respect to such failure to deduct and withhold. (Emphasis supplied)

- B. That section 685(g) of the Tax Law provides in pertinent part as follows:

"(g) Any person required to collect, truthfully account for, and pay over the tax imposed by this article who willfully fails to collect such tax or...pay over such tax...shall,...be liable to a penalty equal to the total amount of tax evaded, or not collected or not accounted for and paid over..."

- C. That since no withholding taxes as required to be withheld, were claimed on a personal income tax return and the personal income tax against which such withholding tax may be credited was paid, it therefore holds that the withholding taxes shall not be collected in accordance with section 676 of the Tax Law.

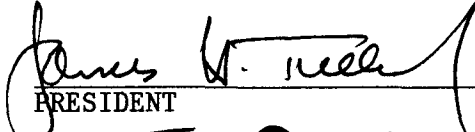
- D. That although petitioner, Stanley Pacosz, is a person required to collect, truthfully account for and pay over the withholding tax for ABC Book Bindery, Inc., he is only liable for a penalty equal to the amount owed by ABC Book Bindery, Inc. That since no tax is owed by ABC Book Bindery, Inc. in accordance with section 676 of the Tax Law; no penalty in accordance with section 685(g) of the Tax Law may be imposed against the petitioner, Stanley Pacosz.

E. That the petition of Stanley Pacosz is granted and the Notice of Deficiency issued on June 28, 1976 is cancelled.

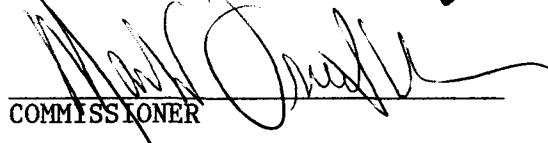
DATED: Albany, New York

OCT 30 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER