

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Gustave Partnoy :
: 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 :
1974.

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 31st day of July 1981, he served the within notice of Decision by certified mail upon Gustave Partnoy, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Gustave Partnoy
676 Bruce Dr.
East Meadows, NY 11554

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
31st day of July, 1981.

Ann G. Haglund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Gustave Partnoy :
AFFIDAVIT OF MAILING :
for Redetermination of a Deficiency or a Revision :
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State of New York
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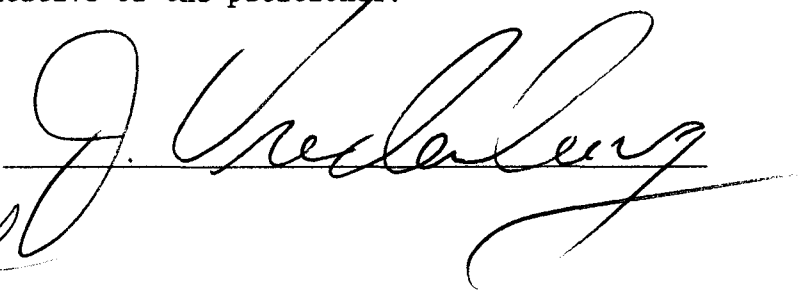
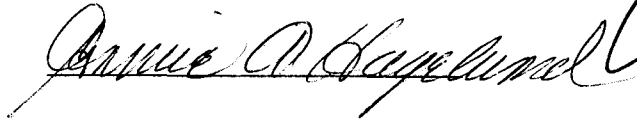
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 31st day of July, 1981, he served the within notice of Decision by certified mail upon Bernard Wincig the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Bernard Wincig
574 Fifth Ave.
New York, NY 10036

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
31st day of July, 1981.

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

July 31, 1981

Gustave Partnoy
676 Bruce Dr.
East Meadows, NY 11554

Dear Mr. Partnoy:

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
Bernard Wincig
574 Fifth Ave.
New York, NY 10036
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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| In the Matter of the Petition | : | |
| of | : | |
| GUSTAVE PARTNOY | : | DECISION |
| for a Redetermination of a Deficiency or for | : | |
| Refund of Personal Income Tax under Article 22 | : | |
| of the Tax Law for the Year 1974. | : | |

Petitioner, Gustave Partnoy, 676 Bruce Drive, East Meadow, New York 11554, filed a petition for a redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1974 (File No. 21025).

A formal hearing was held before Nigel Wright, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 9, 1981. The petitioner appeared by Bernard Wincig, Esq. The Audit Division appeared by Ralph Vecchio, Esq. (Angelo A. Scopellito, Esq., of counsel).

ISSUE

Whether the petitioner is a person responsible for the withholding taxes of Mitchell Screen Print Corp.

FINDINGS OF FACT

1. A Notice of Deficiency and a Statement of Deficiency were issued on August 29, 1977 against Gustave Partnoy, 676 Bruce Drive, East Meadow, New York. This was for a penalty under section 685(g) of the Tax Law for withholding taxes owed by Mitchell Screen Print Corp. of 921 Conklin St., Farmingdale, New York. It is in the amount of \$4,370.14 and is in for the period February 1, 1974 through December 31, 1974.

2. Petitioner was employed in November, 1972 as an outside salesman by two related corporations, Mitchell Screen Print Corp. and Jayne Textile Printing Corp. These corporations were owned by the same persons, Mitchell Malian and Dick Malian. They were also the principal officers of the two corporations.

3. a. Petitioner's duties were exactly the same with both corporations. His duties with respect to Jayne Textile Printing Corp. are set forth in a decision of the Commission dated May 16, 1980 with respect to this petitioner. He had made a cash investment and had exercised some small degree of financial authority in the companies. However, in 1974 both his authority and activity in those corporations diminished. He resigned in early 1975.

b. This Commission has held in a decision dated May 16, 1980 that petitioner was not responsible or liable for the withholding taxes of Jayne Textile Printing Corp.

c. The Audit Division concedes that the decision of the Commission dated May 16, 1980 with respect to this petitioner should control the case.

CONCLUSIONS OF LAW

A. The petitioner is not a person required to collect, account for and pay over the withholding taxes of Mitchell Screen Print Corp. and is not liable for the penalty under section 685(g) of the Tax Law.

B. The Notice of Deficiency is cancelled.

DATED: Albany, New York

JUL 31 1981

STATE TAX COMMISSION

PRESIDENT

COMMISSIONER

COMMISSIONER