

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Richard Prince :
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 :
1966. :

AFFIDAVIT OF MAILING

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 November, 1981, he served the within notice of Decision by certified mail upon Richard Prince, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

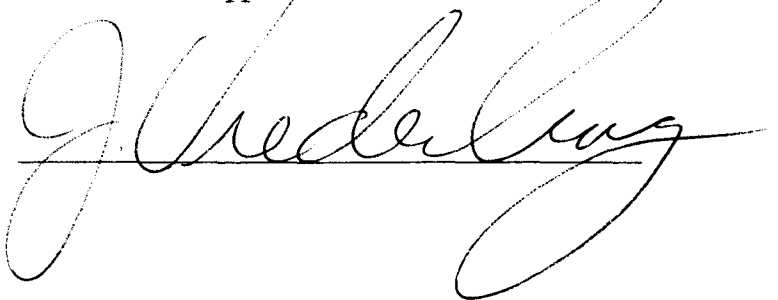
Richard Prince
62 Leroy Street
New York, NY 10014

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 November, 1981.





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Richard Prince :
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 :
1966.

State of New York
County of Albany

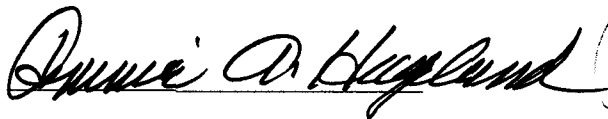
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 27th day of November, 1981, he served the within notice of Decision by certified mail upon S. David Harrison the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

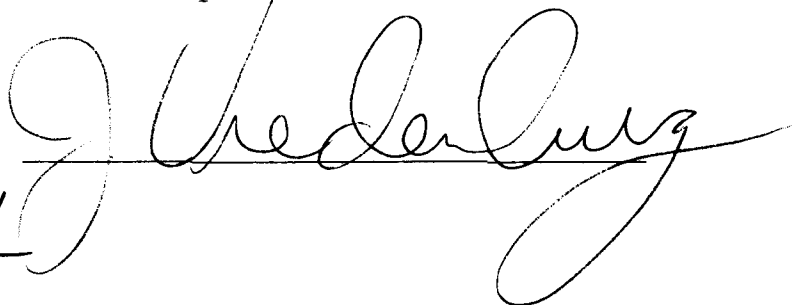
S. David Harrison
Leaf, Kurzman, Deull & Drogen
730 Third Avenue
New York, NY 10017

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
27th day of November, 1981.


James D. Highland


Jay Vredenburg

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

November 27, 1981

Richard Prince
62 Leroy Street
New York, NY 10014

Dear Mr. Prince:

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
S. David Harrison
Leaf, Kurzman, Deull & Drogin
730 Third Avenue
New York, NY 10017
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
RICHARD PRINCE	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1966.	:	

Petitioner Richard Prince, 62 Leroy Street, New York, New York 10014, 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 1966 (File No. 13863 and 13864).

A formal hearing was held before Harvey Baum, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on September 26, 1977, at 1:40 P.M. and continued thereat on December 20, 1977, at 9:15 A.M. Petitioner appeared by Leaf, Kurzman, Deull & Drogin, Esqs. (S. David Harrison, Esq., of counsel). The Audit Division appeared by Peter Crotty, Esq. (Richard Kaufman, Esq. and Lawrence Stevens, Esq. of counsel).

ISSUE

Whether petitioner was a person required to collect, truthfully account for and pay over to New York State income tax withheld from the wages of employees of Gottfried Baking Co., Inc. for the year 1966.

FINDINGS OF FACT

1. On May 25, 1968 the Audit Division issued a Notice of Deficiency and Statement of Deficiency against petitioner, Richard Prince, asserting a penalty in the sum of \$11,920.66, the amount of unpaid New York State withholding tax due from Gottfried Baking Co., Inc. ("Gottfried") for 1966.

2. Gottfried failed to turn over \$11,920.66 in New York State income tax withheld from its employees during the year 1966.

3. In November of 1965 Gottfried filed a plan for reorganization under Chapter 11 of the Bankruptcy Code. At the first meeting of the creditors of Gottfried under the plan, the creditors elected their own certified public accountant to take charge of the financial affairs of Gottfried from that time onward.

4. In November of 1966 Gottfried was adjudicated a bankrupt company.

5. Petitioner was both a director and an officer (ie. the president) of Gottfried during 1966.

6. Petitioner received no salary from Gottfried during 1966.

7. Petitioner's main responsibilities with regard to Gottfried lay in the manufacturing and sales aspects of the business. Petitioner also handled all of the labor relations of Gottfried.

8. Petitioner was directed not to concern himself with the financial affairs of Gottfried by both the controlling shareholder and the chairman of the board of directors of Gottfried.

9. Petitioner contends he had no personal knowledge that the 1966 withholding tax was not being paid.

10. Petitioner had no responsibility with respect to the making of Gottfried's employee withholding form statements.

11. The payroll checks of Gottfried Baking Co. were signed by machine, with the petitioner's signature being stamped thereon. With all other checks of Gottfried, the petitioner would only sometimes be a co-signor.

CONCLUSIONS OF LAW

A. That petitioner, Richard Prince, although an officer and director of Gottfried Baking Co., Inc., was not a person required to collect, account for and pay over New York State withholding taxes. Accordingly, he is not liable to a penalty under section 685(g) of the Tax Law.


B. That the petition of Richard Prince is granted and the Notice of Deficiency issued May 25, 1968 is cancelled.

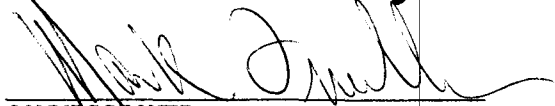
DATED: Albany, New York

NOV 27 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

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

November 27, 1981

Richard Prince
62 Leroy Street
New York, NY 10014

Dear Mr. Prince:

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
S. David Harrison
Leaf, Kurzman, Deull & Drogin
730 Third Avenue
New York, NY 10017
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
RICHARD PRINCE	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1966.	:	

Petitioner Richard Prince, 62 Leroy Street, New York, New York 10014, 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 1966 (File No. 13863 and 13864).

A formal hearing was held before Harvey Baum, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on September 26, 1977, at 1:40 P.M. and continued thereat on December 20, 1977, at 9:15 A.M. Petitioner appeared by Leaf, Kurzman, Deull & Drogin, Esqs. (S. David Harrison, Esq., of counsel). The Audit Division appeared by Peter Crotty, Esq. (Richard Kaufman, Esq. and Lawrence Stevens, Esq. of counsel).

ISSUE

Whether petitioner was a person required to collect, truthfully account for and pay over to New York State income tax withheld from the wages of employees of Gottfried Baking Co., Inc. for the year 1966.

FINDINGS OF FACT

1. On May 25, 1968 the Audit Division issued a Notice of Deficiency and Statement of Deficiency against petitioner, Richard Prince, asserting a penalty in the sum of \$11,920.66, the amount of unpaid New York State withholding tax due from Gottfried Baking Co., Inc. ("Gottfried") for 1966.

2. Gottfried failed to turn over \$11,920.66 in New York State income tax withheld from its employees during the year 1966.

3. In November of 1965 Gottfried filed a plan for reorganization under Chapter 11 of the Bankruptcy Code. At the first meeting of the creditors of Gottfried under the plan, the creditors elected their own certified public accountant to take charge of the financial affairs of Gottfried from that time onward.

4. In November of 1966 Gottfried was adjudicated a bankrupt company.

5. Petitioner was both a director and an officer (ie. the president) of Gottfried during 1966.

6. Petitioner received no salary from Gottfried during 1966.

7. Petitioner's main responsibilities with regard to Gottfried lay in the manufacturing and sales aspects of the business. Petitioner also handled all of the labor relations of Gottfried.

8. Petitioner was directed not to concern himself with the financial affairs of Gottfried by both the controlling shareholder and the chairman of the board of directors of Gottfried.

9. Petitioner contends he had no personal knowledge that the 1966 withholding tax was not being paid.

10. Petitioner had no responsibility with respect to the making of Gottfried's employee withholding form statements.

11. The payroll checks of Gottfried Baking Co. were signed by machine, with the petitioner's signature being stamped thereon. With all other checks of Gottfried, the petitioner would only sometimes be a co-signor.

CONCLUSIONS OF LAW

A. That petitioner, Richard Prince, although an officer and director of Gottfried Baking Co., Inc., was not a person required to collect, account for and pay over New York State withholding taxes. Accordingly, he is not liable to a penalty under section 685(g) of the Tax Law.

B. That the petition of Richard Prince is granted and the Notice of Deficiency issued May 25, 1968 is cancelled.

DATED: Albany, New York

NOV 27 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER

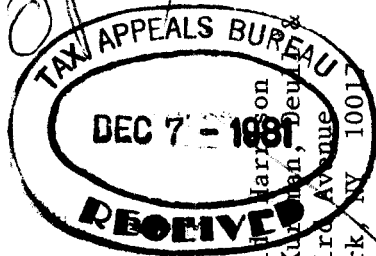

COMMISSIONER

TA 26 (9-79)

STATE OF NEW YORK
State Tax Commission
TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N. Y. 12227

[Handwritten signature]

[Handwritten signature]



S. David Harrison
Leaf, Korman, Deane & Drogin
730 Third Avenue
New York, NY 10017

