

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Stanley J. Reiben :
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 Period :
5/1/73-9/15/74. :

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

Stanley J. Reiben
185 W. End Ave.
New York, NY 10023

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

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of :
Stanley J. Reiben :

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 Period :
5/1/73-9/15/74.

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 Eugene A. Wolkoff the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

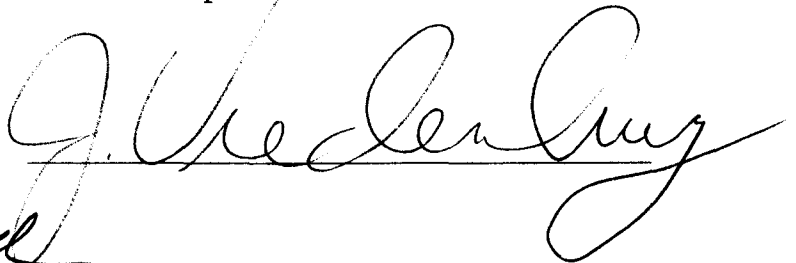
Eugene A. Wolkoff
Callahan & Wolkoff
67 Wall St.
New York, NY 10005

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.





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

November 27, 1981

Stanley J. Reiben
185 W. End Ave.
New York, NY 10023

Dear Mr. Reiben:

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
Eugene A. Wolkoff
Callahan & Wolkoff
67 Wall St.
New York, NY 10005
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
STANLEY J. REIBEN	:	DECISION
for Redetermination of a Deficiency of or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the period May 1, 1973	:	
through September 15, 1974.	:	

Petitioner, Stanley J. Reiben, 185 West End Avenue, New York, New York 10023 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 tax period May 1, 1973 through September 15, 1974 (File No. 16022).

A formal hearing was scheduled to be held before Robert A. Couze, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on July 14, 1981 at 10:00 A.M. However, because petitioner had a serious heart condition and would not be able to attend the hearing the Audit Division took his deposition. The deposition was taken at the offices of the State Department of Taxation and Finance, Two World Trade Center, New York, New York, on May 1, 1981 at 1:00 P.M. Petitioner appeared by Eugene A. Wolkoff, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq., (Angelo A. Scopellito, Esq., of counsel).

ISSUE

Whether petitioner Stanley J. Reiben was a person required to collect, truthfully account for and pay over withholding taxes due from Northerlin Co., Inc.

FINDINGS OF FACT

1. On May 24, 1976 the Audit Division issued a Notice of Deficiency against petitioner in the amount of \$44,833.37 for the tax period May 1, 1973 through September 15, 1974. The Notice of Deficiency, in effect, asserted that petitioner was a person required to collect, truthfully account for and pay over withholding taxes due from Northerlin Co., Inc. ("Northerlin") for the tax periods May 1, 1973 through September 15, 1974 pursuant to the provisions of subsections (g) and (n) of section 685 New York Tax Law.

2. The asserted liability for the several withholding periods is as follows:

"May 1 - December 31, 1973	\$27,326.14
January 1 - March 31, 1974	6,145.97
June 16, - June 30, 1974	5,967.08
September 1 - September 15, 1974	5,394.18
	<u>\$44,833.37"</u>

3. The corporate employer was in the waterproofing business, with 28 offices throughout the United States.

4. Petitioner was the Chairman of the Board of Directors and the President of the corporate employer. Prior thereto he was its attorney and because there was a question regarding his retainer, it was concluded that he would become its Chairman of the Board of Directors and President and accordingly be paid a salary. Petitioner was the party that conceived of his becoming a staff person.

5. Because the waterproofing business is highly regulated, petitioner's prime duty was working with the public officials of the various states and local governments where Northerlin conducted business. In fact, virtually all of petitioner's time was spent out of the office.

6. Petitioner testified that he never signed any checks on behalf of the corporate employer, nor did he have any authority to do so, nor was he able to hire or fire any employees on behalf of the corporate employer.

7. Petitioner did not hold any stock in the corporate employer.

8. Petitioner terminated his service with Northerlin on the first working day of 1974.

CONCLUSIONS OF LAW

A. That section 685(g) of the Tax Law provides that any person required to collect, truthfully account for, and pay over personal income tax, who willfully fails to collect such tax or truthfully account for and pay over such tax or willfully attempts in any manner to evade or defeat the tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty equal to the total amount of the tax evaded, or not collected, or not accounted for and paid over.

B. That section 685(n) of the Tax Law defines the word "person", for the purpose of section 685(g), and reads as follows:

"For purposes of subsections (g) ...the term person includes an individual, corporation or partnership or an officer or employee of any corporation (including a dissolved corporation), or a member or employee of any partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs."

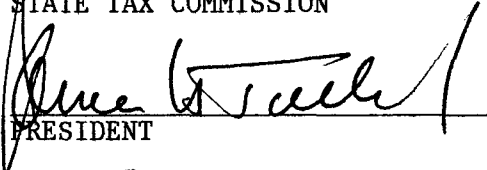
C. That petitioner was not a person required to collect, truthfully account for and pay over the withholding taxes in issue herein.

D. That the petition, is granted and that the Notice of Deficiency is cancelled.

DATED: Albany, New York

NOV 27 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER