

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Lawrence S. Reynolds :

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 Years 1970 - 1971. :

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

Lawrence S. Reynolds
7 Kensington St.
Rochester, NY 14611

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.

Cornie R. Hagelund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

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of
Lawrence S. Reynolds :
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Personal Income Tax :
under Article 22 of the Tax Law
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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 5th day of February, 1981, he served the within notice of Decision by certified mail upon Robert B. Gitlin 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. Robert B. Gitlin
Davidson, Fink, Cook & Gates
900 First Federal Plaza
Rochester, NY 14614

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.

Conrad A. Hagelund

J. Vredenburg

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

February 5, 1981

Lawrence S. Reynolds
7 Kensington St.
Rochester, NY 14611

Dear Mr. Reynolds:

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
Robert B. Gitlin
Davidson, Fink, Cook & Gates
900 First Federal Plaza
Rochester, NY 14614
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
LAWRENCE S. REYNOLDS	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Period	:	
July 1, 1970 through December 31, 1971.	:	

Petitioner, Lawrence S. Reynolds, 7 Kensington Street, Rochester, New York 14611, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the period July 1, 1970 through December 31, 1971 (File No. 13208).

A small claims hearing was held before Arthur Johnson, Hearing Officer, at the offices of the State Tax Commission, One Marine Midland Plaza, Rochester, New York, on June 11, 1980 at 2:45 P.M. Petitioner appeared by Robert B. Gitlin, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Ellen Purcell, 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 The Griffin Agency, Inc. during the period July 1, 1970 through December 31, 1971.

FINDINGS OF FACT

1. The Griffin Agency, Inc. failed to pay New York State personal income tax withheld from the wages of its employees in the amount of \$892.77 for the period July 1, 1970 through December 31, 1971.

2. On September 24, 1973, the Income Tax Bureau issued a Notice of Deficiency and a Statement of Deficiency against petitioner, Lawrence S. Reynolds, asserting a penalty equal to the amount of unpaid New York State withholding tax due from The Griffin Agency, Inc. for the period July 1, 1970 through December 31, 1971.

3. By memorandum dated March 27, 1979, the Audit Division advised the State Tax Commission that the liability of The Griffin Agency, Inc. for unpaid withholding tax be revised as follows:

1970 from \$202.18 to -0-
1971 from \$690.59 to \$443.67

4. The Griffin Agency, Inc. (an advertising agency) was formed in 1970 by petitioner, together with Doris H. Griffin and Larry K. Hamilton. Petitioner held the office of treasurer and was also a stockholder. Doris H. Griffin served as president and Larry K. Hamilton as vice-president.

5. Effective December 17, 1971, petitioner resigned his office of treasurer and terminated all activities with The Griffin Agency, Inc. and any of its operations and financial responsibilities.

6. During the period at issue, petitioner prepared and signed withholding tax returns as controller of The Griffin Agency, Inc. Petitioner was responsible for the day-to-day financial affairs of said corporation which included the disbursement of funds, signing of corporate checks, paying bills and billing for its activities.

7. Petitioner advised the other corporate officers of the outstanding liability for withholding taxes and requested, at the time of his resignation, that said taxes be paid over to New York State. Petitioner contended that based on this action, he did not willfully attempt to evade the payment thereof.

CONCLUSIONS OF LAW

A. That petitioner, Lawrence S. Reynolds, was a person required to collect, truthfully account for and pay over New York State withholding taxes due from The Griffin Agency, Inc. for the period July 1, 1970 through December 31, 1971, within the meaning and intent of section 685(n) of the Tax Law.

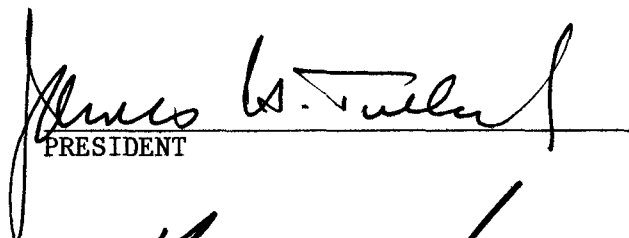
B. That petitioner willfully failed or caused The Griffin Agency, Inc. to willfully fail to collect, truthfully account for and pay over New York State withholding taxes. That petitioner is subject to a penalty pursuant to section 685(g) of the Tax Law. However, in accordance with Finding of Fact "3", such penalty is reduced to \$443.67.

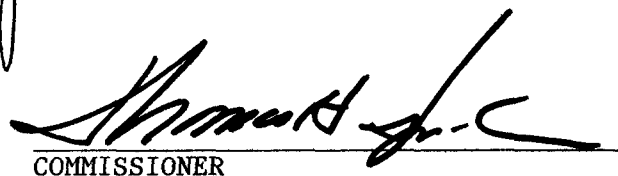
C. That the petition of Lawrence S. Reynolds is granted to the extent indicated in Conclusion of Law "B"; that the Audit Division is hereby directed to modify the Notice of Deficiency issued September 24, 1973; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

STATE TAX COMMISSION

FEB 05 1981


PRESIDENT


COMMISSIONER


COMMISSIONER