

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Marshall Robertson :
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 Years :
1974 & 1975.

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 25th day of September, 1981, he served the within notice of Decision by certified mail upon Marshall Robertson, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Marshall Robertson
169-07 81st Ave.
Jamaica, NY 11432

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
25th day of September, 1981.

Annie R. Hagelund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

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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 25th day of September, 1981, he served the within notice of Decision by certified mail upon George R. Krumholz the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

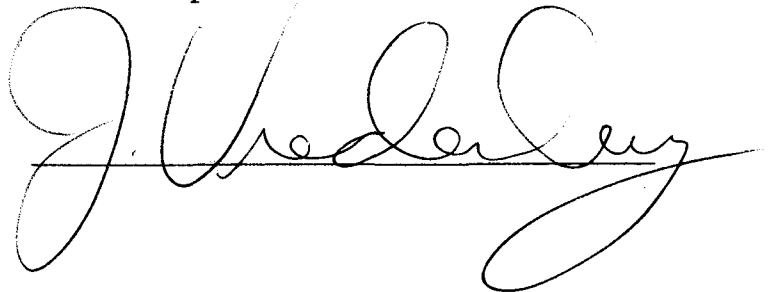
George R. Krumholz
17 Malden Circle
Wheatly Heights, NY 11798

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
25th day of September, 1981.





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

September 25, 1981

Marshall Robertson
169-07 81st Ave.
Jamaica, NY 11432

Dear Mr. Robertson:

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
George R. Krumholz
17 Malden Circle
Wheatly Heights, NY 11798
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
MARSHALL ROBERTSON	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Years 1974 and 1975.	:	

Petitioner, Marshall Robertson, 169-07 81st Avenue, Jamaica, New York 11432, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1974 and 1975 (File No. 19960).

A small claims hearing was held before William Valcarcel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 8, 1980 at 9:15 A.M. Petitioner, Marshall Robertson, appeared with George R. Krumholz, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Frank Levitt, Esq., of counsel).

ISSUE

Whether petitioner is subject to a penalty under section 685(g) of the Tax Law for failure to pay over personal income taxes withheld from the employees of Deran Marshall, Inc.

FINDINGS OF FACT

1. On March 28, 1977, the Audit Division issued a Notice of Deficiency for \$1,261.20 against petitioner, Marshall Robertson. Attached thereto was a Statement of Deficiency which explained that petitioner was subject to a penalty under section 685(g) of the Tax Law as a person who willfully failed to collect, or truthfully account for and pay over personal income taxes withheld

from the employees of Deran Marshall, inc., during the periods February 1, 1974 to February 28, 1974 (in the sum of \$600.00) and October 1, 1975 to October 28, 1975 (in the sum of \$661.20).

2. On June 28, 1977, the Audit Division reduced the Notice of Deficiency issued March 28, 1977 by \$4.26, which represented the first and final dividend paid through the bankruptcy proceeding of Deran Marshall, Inc.

3. Petitioner, Marshall Robertson, was stockholder, president and director of Deran Marshall, Inc., and contended that withholding taxes were paid for February, 1974, and that no withholding taxes were due for October, 1975.

4. Petitioner submitted a photocopy of a corporate check for \$1,416.08, payable to the "New York State Income Tax Bureau" with a typed notation, "withholding taxes for period January 1, 1975 to September 30, 1975." In addition, petitioner rendered sworn testimony and affidavits from former employees indicating that Deran Marshall, Inc. was out of business and had no employees after September 30, 1975.

5. Petitioner, Marshall Robertson, rendered sworn testimony that withholding taxes for the year 1974, including February, 1974, were collected, truthfully accounted for and paid. In support thereof, petitioner submitted a copy of a "Reconciliation of Personal Income Tax Withheld" form (IT-2103) filed by the corporation for the year 1974, which indicated that \$3,951.80 in personal income taxes were withheld and paid. The aforementioned form (IT-2103) was obtained by petitioner from the Audit Division and was a copy of the original form filed by the corporation.

6. Although the Audit Division issued a deficiency and imposed a penalty against petitioner, no evidence was submitted as to the source or nature of available information, if any, that withholding taxes for February, 1974, and

October, 1975 were due and not paid by Deran Marshall, Inc. No evidence was submitted whether an assessment was issued against Deran Marshall, Inc., for withholding taxes due during the years 1974 and/or 1975.

CONCLUSIONS OF LAW

A. That petitioner, Marshall Robertson, has sustained the burden of proof as required in section 689(e) of the Tax Law in establishing that no withholding taxes were due or owing from Deran Marshall, Inc., during the periods February 1, 1974 to February 28, 1974, and October 1, 1975 to October 28, 1975. Accordingly, petitioner Marshall Robertson is not subject to a penalty in accordance with the meaning and intent of section 685(g) of the Tax Law.

B. That the petition of Marshall Robertson is granted and the Notice of Deficiency issued March 28, 1977 is cancelled.

DATED: Albany, New York

SEP 25 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER