

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Adrianne Sands :
: 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 :
1968. :

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 14th day of August, 1981, he served the within notice of Decision by certified mail upon Adrianne Sands, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Adrianne Sands
360 E. 72nd St.
New York, NY 10021

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
14th day of August, 1981.

Connie A. Haglund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Adrianne Sands :
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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 :
1968. :

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 14th day of August, 1981, he served the within notice of Decision by certified mail upon Kenneth Simon the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Kenneth Simon
Taylor, Ference & Simon
60 E. 42nd St.
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
14th day of August, 1981.

Cornie A. Haglund

J. Vredenburg

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

August 14, 1981

Adrienne Sands
360 E. 72nd St.
New York, NY 10021

Dear Ms. Sands:

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
Kenneth Simon
Taylor, Ference & Simon
60 E. 42nd St.
New York, NY 10017
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
ADRIANNE SANDS	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22 :	:	
of the Tax Law for the Year 1968.	:	

Petitioner, Adrienne Sands, 360 East 72nd Street, New York, New York 10021, 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 1968 (File No. 20131).

A small claims hearing was held before James Hoefer, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 6, 1981 at 2:45 P.M. Petitioner, Adrienne Sands, appeared with Joshua A. Rednor, CPA and Taylor, Ferencz & Simon (Kenneth Simon, Esq., of counsel). The Audit Division appeared by Ralph J. Vecchio, Esq. (Irwin Levy, Esq., of counsel).

ISSUES

I. Whether petitioner is subject to a penalty, imposed pursuant to section 685(g) of the Tax Law, as a person required to collect, truthfully account for and pay over withholding taxes due and owing from Bruce A. Sands Pkg. Co., Inc. for the year 1968.

II. Whether the Notice of Deficiency was timely issued within the applicable statute of limitations.

III. Whether the Audit Division has properly computed the amount of unpaid withholding taxes due and owing from Bruce A. Sands Pkg. Co., Inc. for 1968.

FINDINGS OF FACT

1. Under date of July 27, 1977 the Audit Division issued a Statement of Deficiency against petitioner imposing a penalty, pursuant to section 685(g) of the Tax Law, because of a failure to remit taxes withheld from the employees of Bruce A. Sands Pkg. Co., Inc. (hereinafter "the corporation") for 1968. Said statement was issued on the grounds that petitioner was a person required to collect, truthfully account for and pay over said corporate withholding taxes and that she willfully failed to do so. Accordingly, on July 27, 1977 a Notice of Deficiency was issued against petitioner in the amount of \$1,055.75.

2. Bruce A. Sands Pkg. Co., Inc. filed Form IT-2103 (BNS), Reconciliation of Personal Income Tax Withheld for Employers Filing Semi-Monthly, Monthly and Semi-Annually. Said reconciliation was not signed or dated and indicated a total tax withheld from employees during the calendar year 1968 of \$1,604.09. No documentary evidence was adduced at the hearing held herein as to whether or not the corporation filed the semi-monthly, monthly or semi-annual returns with the Audit Division.

3. Petitioner, Adrienne Sands, in 1963 married Bruce A. Sands who, although involved with the management of the corporation, was not a party to the present proceeding. Mrs. Sands during 1968 was an officer of the corporation, however, she did not hire or fire employees, did not have access to corporate records, did not draw a salary from the corporation or receive any other form of compensation, did not determine which creditors of the corporation were to be paid, did not sign corporate tax returns and did not participate in the management of corporate affairs. Petitioner could not recall whether or not she had authority to sign corporate checks, however, if such an authority existed, it was not exercised, as petitioner spent her days at home raising her

two children who were born in 1964 and 1968. Adrienne Sands first became aware of the corporation's failure to pay over 1968 New York State tax withheld from employees upon her receipt of the Statement of Deficiency.

CONCLUSIONS OF LAW

A. That petitioner, Adrienne Sands, was not a person required to collect, truthfully account for and pay over the New York State withholding taxes of Bruce A. Sands Pkg. Co., Inc. for 1968 and, accordingly, the penalty asserted against her pursuant to section 685(g) of the Tax Law is hereby cancelled.

B. That the issues raised by petitioner with respect to the statute of limitations and the computation of the dollar amount of past due withholding taxes are rendered moot in light of Conclusion of Law "A", supra.

C. That the petition of Adrienne Sands is granted and the Notice of Deficiency issued July 27, 1977 is hereby cancelled.

DATED: Albany, New York

AUG 14 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER