

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
of

Leonard Saul

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 1975 & 1976. :

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 20th day of February, 1981, he served the within notice of Decision by certified mail upon Leonard Saul, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Leonard Saul
RR 1, Box 85 A
Milford, PA 18337

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
20th day of February, 1981.

Gennie A. Hagellund

J. Vredenburg

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

February 20, 1981

Leonard Saul
RR 1, Box 85 A
Milford, PA 18337

Dear Mr. Saul:

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

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
LEONARD SAUL	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Years 1975 and 1976.	:	

Petitioner Leonard Saul, RR 1, Box 85A, Milford, Pennsylvania 18337, 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 1975 and 1976 (File No. 17473).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on February 14, 1979 at 10:45 A.M. Petitioner appeared pro se. The Audit Division appeared by Peter Crotty, Esq. (Patricia L. Brumbaugh, Esq. of counsel).

ISSUE

Whether petitioner was a person required to collect, truthfully account for and pay over the withholding taxes due from Little Tots, Inc. for 1975 and 1976.

FINDINGS OF FACT

1. On October 25, 1976, the Audit Division issued a Statement of Deficiency against petitioner, Leonard Saul, imposing a penalty equal to the amount of New York State withholding taxes due from Little Tots, Inc. for "additional 1975" and the period February 1, 1976 to March 26, 1976. This was done on the grounds that he was a person required to collect, truthfully account for and

pay over said taxes, and that he willfully failed to do so. Accordingly, on October 25, 1976, a Notice of Deficiency was issued to him for \$5,058.16.

2. Little Tots, Inc. failed to pay over to New York State \$5,058.16 in personal income taxes withheld from its employees' wages for the periods in issue.

3. Leonard Saul was president of Little Tots, Inc. during the periods at issue and until it went into bankruptcy in April 1976. New York State was listed as a preferred creditor in the bankruptcy petition. Due to litigation, there had been no distribution of assets at the time of the hearing. Petitioner admits responsibility for the withholding taxes up until December, 1975. He also claims that there are sufficient assets available to pay secured creditors, including the State.

4. Little Tots, Inc. factored its accounts receivable to Chase Manhattan Bank commencing in December 1975. Sufficient funds were provided by the bank to keep Little Tots, Inc. operating. The bookkeeper, Evelyn Smith, was told by the bank what disbursements to make and was told "to hold off and wait" for money to pay withholding taxes. The interest of the bank was in keeping the concern going until it was repaid.

CONCLUSIONS OF LAW

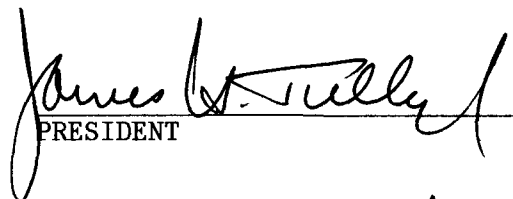
A. That petitioner, Leonard Saul, was a person required to collect, truthfully account for and pay over withholding taxes due from Little Tots, Inc. within the meaning of Subsections (g) and (n) of Section 685 of the Tax Law and who willfully failed to do so. To permit corporate officers to escape liability by entering into agreements which prefer other creditors to the government would defeat the entire purpose of the statute (Kalb v. United States, 505 F.2d 506 cert. denied 421 U.S. 979).

B. That the petition of Leonard Saul is denied and the Notice of Deficiency issued October 25, 1976 is sustained.

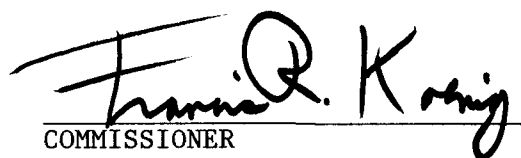
DATED: Albany, New York

FEB 20 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER