

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

M. Scher & Son, Inc. :

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 1973 - 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 5th day of February, 1981, he served the within notice of Decision by certified mail upon M. Scher & Son, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

M. Scher & Son, Inc.
136 N. Lake Ave.
Albany, NY 12206

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.

Connie A. Haglund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

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M. Scher & Son, Inc. :

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for Redetermination of a Deficiency or a Revision :

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Personal Income Tax :

under Article 22 of the Tax Law

for the Years 1973 - 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 5th day of February, 1981, he served the within notice of Decision by certified mail upon George Sherman 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. George Sherman
Cohen, Scheer & Sherman
1510 Central Ave.
Albany, NY 12205

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.

Connie P. Haglund

J. Vredenburg

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

February 5, 1981

M. Scher & Son, Inc.
136 N. Lake Ave.
Albany, NY 12206

Gentlemen:

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 Sherman
Cohen, Scheer & Sherman
1510 Central Ave.
Albany, NY 12205
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
M. SCHER & SON, INC.	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Years	:	
1973, 1974 and 1975.	:	

Petitioner, M. Scher & Son, Inc., 136 North Lake Avenue, Albany, New York 12206, 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 1973, 1974 and 1975 (File No. 19719).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, State Campus, Building 9, Albany, New York, on June 26, 1979 at 9:15 A.M. Petitioner appeared by George Sherman, CPA. The Audit Division appeared by Peter Crotty, Esq. (J. Ellen Purcell, Esq., of counsel).

ISSUE

Whether petitioner had reasonable cause for the late filing and delinquent payment of withholding taxes.

FINDINGS OF FACT

1. On July 8, 1976, petitioner, M. Scher & Son, Inc., filed Claims for Credit or Refund of Personal Income Tax for periods in 1973, 1974 and 1975 which totalled \$6,586.07. On May 23, 1977, petitioner was advised that "The explanation submitted, regarding nonpayment of withholding tax when due, does not constitute reasonable excuse. Therefore, penalties were properly assessed under Section 685 of the Tax Law. There is no basis for any refund."

2. Petitioner paid \$6,586.07 pursuant to section 685 of the Tax Law for penalties for delinquency and failure to pay State withholding tax during periods in 1973 through 1975. The reasonable cause cited by petitioner, a contractor, for late filing and for delinquency and failure to pay withholding taxes was that it could not meet its obligations due to the failure of its prime accounts, namely federal and state agencies. Petitioner was a subcontractor working on the Albany South Mall, Otisville Training School, Tryon School for Boys and Allegheny State Park. All were State contracts. Petitioner had a problem with securing payment from the prime contractor which had audit problems of its own in securing payment.

CONCLUSIONS OF LAW

A. That sections 685(a)(1) and (2) of the Tax Law provide as follows:

"§685. Additions to tax and civil penalties

(a)(1) Failure to file tax return. - In case of failure to file a tax return under this article on or before the prescribed date (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount required to be shown as tax on such return five percent of the amount of such tax if the failure is for not more than one month, with an additional five percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate. For this purpose, the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may be claimed upon the return.

(2) Failure to pay tax shown on return. - In case of failure to pay the amounts shown as tax on any return required to be filed under this article on or before the prescribed date (determined with regard to any extension of time for payment), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount shown as tax on such return one-half of one per cent of the amount of such tax if the failure is not for more than one month, with an additional one-half of one per cent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five per cent in the aggregate. For the purpose of computing the addition for any month, the amount of tax shown on the return shall be reduced by the amount of tax shown on the return shall be reduced by the amount of

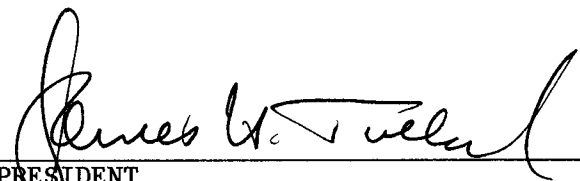
any part of the tax which is paid on or before the beginning of such month and by the amount of any credit against the tax which may be claimed upon the return. If the amount of tax required to be shown on a return is less than the amount shown as tax on such return, this paragraph shall be applied by substituting such lower amount." (Emphasis supplied.)

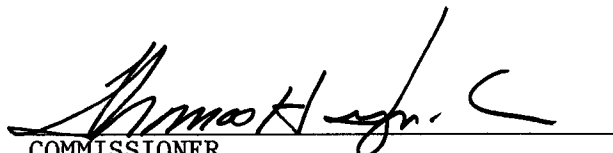
B. That petitioner has not shown that failure was due to reasonable cause rather than wilfull neglect. Therefore, the petition of M. Scher & Son, Inc. is denied and the denial on May 23, 1977 by the Audit Division for a refund of penalties paid is affirmed.

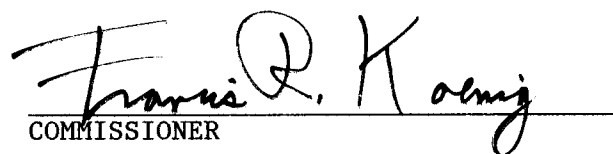
DATED: Albany, New York

STATE TAX COMMISSION

FEB 05 1981


PRESIDENT


COMMISSIONER


COMMISSIONER