

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
Robert Schnur

:

:

: 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 3rd day of July, 1981, he served the within notice of Decision by certified mail upon Robert Schnur, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Robert Schnur
Soundview Gardens
Port Washington, NY

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
3rd day of July, 1981.

Annex A. Hagedorn

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Robert Schnur :

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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 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 3rd day of July, 1981, he served the within notice of Decision by certified mail upon Arthur E. Eisman the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Arthur E. Eisman
Eisman & Co., P.C.
2001 Palmer Ave.
Larchmont, NY 10538

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
3rd day of July, 1981.

Conne P. Hagelund

J. Vredenburg

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

July 3, 1981

Robert Schnur
Soundview Gardens
Port Washington, NY

Dear Mr. Schnur:

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
Arthur E. Eisman
Eisman & Co., P.C.
2001 Palmer Ave.
Larchmont, NY 10538
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
ROBERT SCHNUR	:	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, Robert Schnur, 13 Welwyn Road, Great Neck, New York, 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. 22821).

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 27, 1980 at 2:45 P.M. Petitioner, Robert Schnur, appeared with Ernest Hirsch, CPA. The Audit Division appeared by Ralph J. Vecchio, Esq. (Samuel Freund, Esq., of counsel).

ISSUE

Whether petitioner is subject to a penalty under section 685(g) of the Tax Law as a person who willfully failed to collect, truthfully account for and pay over personal income taxes withheld from employees of Martin Judy, Inc.

FINDINGS OF FACT

1. Martin Judy, Inc. (hereinafter the corporation) was an automobile rental business conducting its activities in the name and style of Thrifty Rent-A-Car. The corporation failed to remit \$1,375.20 in personal income taxes withheld from its employees during July 1974 and May 1975.

2. On January 30, 1978, the Audit Division issued a Notice of Deficiency for \$1,375.20, along with a Statement of Deficiency, which held petitioner, Robert Schnur, subject to a penalty under section 685(g) of the Tax Law, as a person who willfully failed to collect, truthfully account for and pay over personal income taxes withheld from the employees of the corporation. On June 15, 1978, the Audit Division issued a Notice and Demand for Payment of Income Tax Due based on the aforementioned deficiency. No issue was raised by the Audit Division regarding the aforementioned assessment of June 15, 1978.

3. Petitioner, Robert Schnur, was vice-president of the corporation in charge of managing one of its branch offices. His sole responsibility was with the day-to-day rental operations of the branch office. Petitioner was not a stockholder or creditor of the corporation and had no voice or authority in its financial and bookkeeping activities. Petitioner was not granted authority to issue or sign corporate checks, and was not aware that withholding taxes were not being paid.

4. On April 10, 1975, petitioner, Robert Schnur, resigned his position with the corporation.

CONCLUSIONS OF LAW

A. That petitioner, Robert Schnur, is not a "person" as defined in section 685(n) of the Tax Law and accordingly, is not subject to a penalty in accordance with the meaning and intent of section 685(g) of the Tax Law.

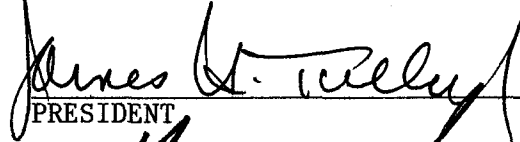
B. That the petition of Robert Schnur is granted and the Notice of Deficiency issued January 30, 1978 is cancelled.

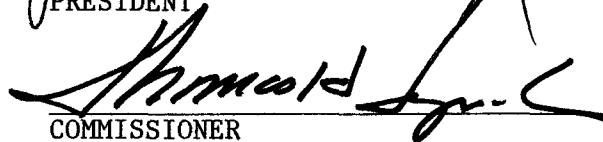
C. That the Notice and Demand for Payment of Income Tax Due issued
June 15, 1978 is presumed to have been issued prematurely and is cancelled.

DATED: Albany, New York

JUL 03 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER