

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :

of

Joseph Shapiro :

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 1972 & 1973. :

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 Joseph Shapiro, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Joseph Shapiro  
1353 Blue Spruce La.  
Wantagh, NY 11793

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.

*Cornie A. Hagelund*

*J. Vredenburg*

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

February 20, 1981

Joseph Shapiro  
1353 Blue Spruce La.  
Wantagh, NY 11793

Dear Mr. Shapiro:

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

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In the Matter of the Petition :  
of :  
JOSEPH SHAPIRO : DECISION  
for Redetermination of a Deficiency or :  
for Refund of Personal Income Tax under :  
Article 22 of the Tax Law for the Years :  
1972 and 1973.

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Petitioner, Joseph Shapiro, 1353 Blue Spruce Lane, Wantagh, New York 11793, 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 1972 and 1973 (File No. 16025).

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 July 23, 1980 at 9:15 A.M. Petitioner appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (Samuel Freund, Esq., of counsel).

ISSUE

Whether petitioner, Joseph Shapiro, 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 withholding taxes.

FINDINGS OF FACT

1. Laurel Delicatessen Corp. (hereinafter "the Corporation") withheld from its employees New York State personal income taxes during the years 1972 and 1973, but failed to remit \$2,915.80 of the total amount withheld.

2. On June 28, 1976, the Audit Division issued a Notice of Deficiency for \$2,915.80, along with an explanatory Statement of Deficiency, imposing a penalty against petitioner, Joseph Shapiro, pursuant to section 685(g) of the Tax Law as a person who willfully failed to collect, truthfully account for and pay over withholding taxes.

3. Petitioner, Joseph Shapiro, was an active corporate officer and stockholder of the Corporation until August 7, 1973, when he sold his shares to the only other stockholder and corporate officer. Accordingly, the Audit Division conceded that petitioner was not subject to a penalty pursuant to section 685(g) of the Tax Law for withholding taxes collected or due after August 7, 1973.

4. Petitioner contended that upon his departure on August 7, 1973, \$3,333.00 in various taxes were outstanding from the previous quarter. However, he could not provide a breakdown of the specific amount due in each particular tax and assumed that these taxes were subsequently paid. Petitioner also contended that all withholding taxes due during the year 1972 and during the early months of 1973 were paid. Books, records and other documentary evidence supporting petitioner's contentions were not offered into evidence.

#### CONCLUSIONS OF LAW

A. That petitioner, Joseph Shapiro, was a person as defined by section 685(n) of the Tax Law, who willfully failed to collect and pay over personal income taxes withheld by Laurel Delicatessen Corp. during the year 1972 and during the period January 1, 1973 through August 7, 1973.

B. That petitioner, Joseph Shapiro, is subject to a penalty in accordance with the meaning and intent of section 685(g) of the Tax Law.

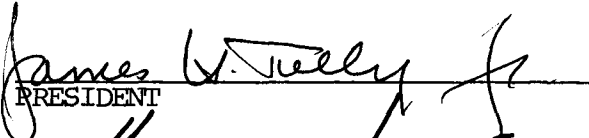
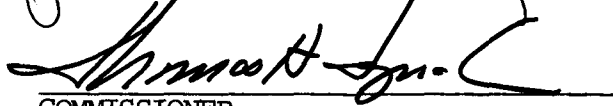
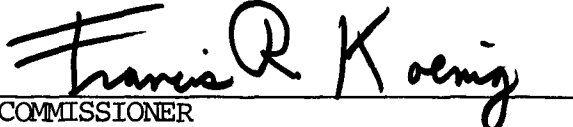
C. That the petition of Joseph Shapiro is granted to the extent that the penalty imposed under section 685(g) of the Tax Law for any period after August 7, 1973 is hereby cancelled.

D. That the Audit Division is hereby directed to modify accordingly the Notice of Deficiency issued June 28, 1976; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

STATE TAX COMMISSION

FEB 20 1981

  
PRESIDENT  
  
COMMISSIONER  
  
COMMISSIONER