

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
Alvin Silverstein

:

:

: 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 :
1974-1976

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 5th day of June, 1981, he served the within notice of Decision by certified mail upon Alvin Silverstein, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Alvin Silverstein
1117 Sheldon Dr.
Westbury, NY 11590

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 June, 1981.

Connie A. Haglund

J. Vredenburg

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

June 5, 1981

Alvin Silverstein
1117 Sheldon Dr.
Westbury, NY 11590

Dear Mr. Silverstein:

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	:	
	:	
ALVIN SILVERSTEIN	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Years	:	
1974, 1975 and 1976.	:	

Petitioner, Alvin Silverstein, 1117 Sheldon Drive, Westbury, New York 11590, 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, 1975 and 1976 (File No. 23797).

A small claims hearing was held before Allen Caplowaith, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 23, 1980 at 1:15 P.M. Petitioner appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (Samuel Freund, Esq., of counsel).

ISSUE

Whether petitioner is subject to a penalty pursuant to section 685(g) of the Tax Law as a person who willfully failed to collect, truthfully account for and pay over the New York State withholding taxes due from Abbey Wedding Service, Inc.

FINDINGS OF FACT

1. Abbey Wedding Service, Inc., 2076 Front Street, East Meadow, New York 11554, failed to pay over the New York State personal income taxes withheld from the wages of its employees for the periods as follows:

<u>Withholding Tax Period</u>	<u>Amount</u>
October 1, 1974 to December 31, 1974	\$ 641.26
March 1, 1975 to March 31, 1975	270.60
June 1, 1975 to December 31, 1975	1,285.30
January 1, 1976 to June 30, 1976	445.70
Total	<u>\$2,642.86</u>

2. On June 26, 1978, the Audit Division issued a Statement of Deficiency in conjunction with a Notice of Deficiency against petitioner, Alvin Silverstein, wherein a penalty was asserted pursuant to section 685(g) of the Tax Law, for an amount equal to the New York State withholding taxes due from Abbey Wedding Service, Inc. Said penalty was asserted on the ground that petitioner was a person required to collect, truthfully account for and pay over the withholding taxes.

3. Petitioner was vice president of Abbey Wedding Service, Inc. (hereinafter the Company). As such, he contended that his duties were related to the management of three of the four retail stores operated by the Company. He owned no corporate stock of the Company.

4. Petitioner contended that Stephen Tucker, who was president and stockholder in the Company, was the person responsible for the collection and payment of taxes.

5. Petitioner, who was aware that the withholding taxes were not being paid, contended that in July 1976 he visited the Mineola District Office of the Department of Taxation and Finance and informed the appropriate personnel that Mr. Tucker was contemplating leaving the country. He claims that he took such action so that Mr. Tucker's, and if necessary, his own assets could be attached. He contended that Mr. Tucker subsequently left the State and the withholding tax liability remains outstanding solely on the basis of the State's lack of action with respect to his notification.

6. The Company's payroll checks required the signatures of both Mr. Tucker and the petitioner.

7. Each monthly Employer's Return - Personal Income Tax Withheld submitted for the period January 1, 1976 through June 30, 1976 was signed by petitioner as secretary.

8. The Company, which ceased doing business in mid-1976, was paying other creditors during the period at issue.

CONCLUSIONS OF LAW

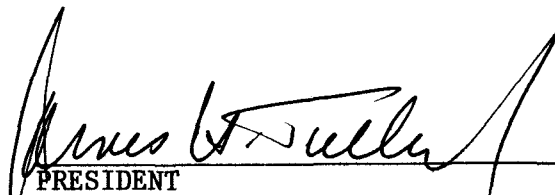
A. That petitioner has failed to sustain his burden of proof required pursuant to section 689(e) of the Tax Law to show that he was not a person who willfully failed to collect, truthfully account for and pay over the New York State withholding taxes due from Abbey Wedding Service, Inc. Accordingly, the penalty asserted pursuant to section 685(g) of the Tax Law is sustained.

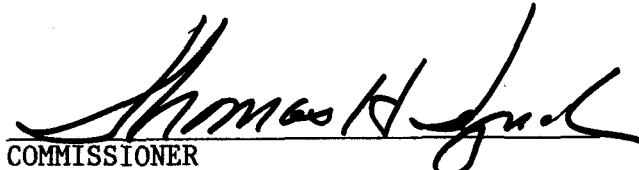
B. That the petition of Alvin Silverstein is denied and the Notice of Deficiency dated June 26, 1978 is hereby sustained.

DATED: Albany, New York

JUN 5 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER