

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Sheldon Sinaberg :  
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 Period :  
10/1/73 - 3/31/75.

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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 23rd day of October, 1981, he served the within notice of Decision by certified mail upon Sheldon Sinaberg, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Sheldon Sinaberg  
39 Daniel Rd. S.  
N. Massapequa, NY 11758

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  
23rd day of October, 1981.

*Cherie A. Hagel*

*J. Vredenburg*

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Sheldon Sinaberg :  
AFFIDAVIT OF MAILING  
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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 23rd day of October, 1981, he served the within notice of Decision by certified mail upon Richard J. Warren the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Richard J. Warren  
Manning & Warren  
26 Court St., Room 405  
Brooklyn, NY 11242

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  
23rd day of October, 1981.

*Conni A. Haglund*

*J. Vredenburg*

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

October 23, 1981

Sheldon Sinaberg  
39 Daniel Rd. S.  
N. Massapequa, NY 11758

Dear Mr. Sinaberg:

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  
Richard J. Warren  
Manning & Warren  
26 Court St., Room 405  
Brooklyn, NY 11242  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
SHELDON SINABERG	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax Under Article 22	:	
of the Tax Law for the Period October 1, 1973	:	
through March 31, 1975.	:	

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Petitioner, Sheldon Sinaberg, 39 Daniel Road South, North Massapequa, New York 11758, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the period October 1, 1973 through March 31, 1975 (File No. 20030).

A formal hearing was held before Robert A. Couze, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 18, 1981 at 1:15 p.m. Petitioner appeared by Manning & Warren, Esqs., (Richard J. Warren, Esq., of counsel). The Audit Division appeared by Ralph J. Vecchio, Esq., (Barry M. Bresler, Esq., of counsel).

ISSUE

Whether petitioner Sheldon Sinaberg was a party required to collect, truthfully account for and pay over withholding taxes due from Marvin Greenfield Construction Corp.

FINDINGS OF FACT

1. On June 28, 1976 the Audit Division issued notices of deficiency and statements of deficiency against petitioner as follows:

October 1 to December 31, 1973	\$ 3,927.96
January 1 to January 31, 1974	952.60
February 1 to February 28, 1974	535.30
March 1 to March 31, 1974	482.90
April 1 to April 30, 1974	346.30
May 1 to May 31, 1974	381.60
June 1 to June 30, 1974	293.00
July 1 to July 31, 1974	335.50
August 1 to August 31, 1974	464.90
September 1 to September 30, 1974	352.30
October 1 to December 31, 1974	2,742.66
January 1 to March 31, 1975	<u>1,423.54</u>
Total Due	\$12,238.56

2. The Audit Division asserted petitioner was a person required to collect, truthfully account for and pay over withholding taxes due from the corporate employer, Marvin Greenfield Construction Corp., pursuant to the provisions of New York Tax Law, section 685, subsections (g) and (n)

3. The corporate employer was in the construction business.

4. The petitioner, an engineer, was in charge of the actual on-site construction and was also responsible for obtaining the proper construction permits.

5. The applications for construction permits were required to be signed by an engineer and by an officer of the corporate employer. Accordingly, as a matter of convenience, petitioner was made a vice president of the corporation and thus was able to sign the applications for same as, both the engineer and as an officer.

6. The petitioner did not have any managerial function over the operation of the corporate employer. That was under the sole supervision and direction of the corporate employer's president and owner, one Marvin E. Greenfield.

7. Petitioner did not have any check writing authority, nor was he a member of the corporate employer's board of directors nor was he a holder of any stock in the corporate employer.

CONCLUSIONS OF LAW

A. That section 685(g) of the Tax Law provides that any person required to collect, truthfully account for, and pay over the personal income tax imposed by the Tax Law, who willfully fails to collect such tax or truthfully account for and pay over such tax or willfully attempts in any manner to evade or defeat the tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty equal to the total amount of the tax evaded, or not collected, or not accounted for and paid over.

B. That section 685(n) of the Tax Law defines the word "person", for the purpose of section 685(g), and reads as follows:

"For purpose of subsections (g)...the term person includes an individual, corporation or partnership or an officer or employee of any corporation (including a dissolved corporation), or a member or employee of any partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs".

C. That petitioner was not a person required to collect, truthfully account for, and pay over the personal income tax in issue herein.


D. That the petition, herein, is granted and that the notices of deficiency are cancelled.

DATED: Albany, New York

OCT 23 1981

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER