

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
Arthur Spiegel

:

:

: 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 19th day of June, 1981, he served the within notice of Decision by certified mail upon Arthur Spiegel, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Arthur Spiegel
120-12 Carver Loop
Bronx, NY 10475

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
19th day of June, 1981.

Cornelia A. Hagelund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Arthur Spiegel :

: 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 19th day of June, 1981, he served the within notice of Decision by certified mail upon Allen Seif 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. Allen Seif
122 E. 42nd St.
New York, NY 10017

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
19th day of June, 1981.

Cornie A. Haglund

J. Vredenburg

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

June 19, 1981

Arthur Spiegel
120-12 Carver Loop
Bronx, NY 10475

Dear Mr. Spiegel:

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
Allen Seif
122 E. 42nd St.
New York, NY 10017
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
ARTHUR SPIEGEL	:	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, Arthur Spiegel, 120-12 Carver Loop, Bronx, New York 10475, 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. 20136).

A formal hearing was held before Gasper S. Fasullo, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 21, 1980 at 9:15 A.M. Petitioner appeared by Allen Seif, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Abraham Schwartz, Esq., of Counsel).

ISSUE

Whether petitioner was a person required to collect, truthfully account for and pay over New York State withholding taxes of Atlas Sheet Metal Works, Inc. during the periods October 1, 1974 through December 31, 1974 and April 1, 1975 through October 14, 1975.

FINDINGS OF FACT

1. On March 28, 1977 the Audit Division issued a Statement of Deficiency against petitioner, Arthur Spiegel, imposing penalties equal to the amount of New York State withholding taxes due from Atlas Sheet Metal Works, Inc. for the periods October 1, 1974 through December 31, 1974 and April 1, 1975 through

October 14, 1975. This was done on the grounds that petitioner was a person required to collect, truthfully account for and pay over said taxes, and that he willfully failed to do so. On March 28, 1977 a Notice of Deficiency in the amount of \$35,560.56 (\$12,213.82 for 1974 and \$23,346.74 for 1975) was issued to the petitioner.

2. Atlas Sheet Metal Works, Inc. failed to pay over to the New York State Income Tax Bureau personal income taxes withheld from employees' wages for the periods October 1, 1974 through December 31, 1974 and April 1, 1975 through October 14, 1975.

3. During the years 1974 and 1975 petitioner, Arthur Spiegel, was vice-president, a stockholder and member of the Board of Directors of Atlas Sheet Metal Works, Inc.

4. All corporate checks required two signatures, that of the president and that of the vice-president (petitioner).

5. Petitioner admits that included among checks signed by him were those issued in payment of withholding taxes.

6. The Internal Revenue Service has found petitioner liable for unpaid Federal withholding taxes.

7. All of the affairs and activities in the management of Atlas Sheet Metal Works, Inc. were conducted by petitioner and the president of the corporation.

8. During 1974 and 1975 the petitioner knew withholding taxes were not being paid when due, and discussed the matter of such arrears with the president of the corporation. Petitioner offered as an excuse the fact that a "tight money situation" existed and collections were bad.

9. On October 14, 1975 Atlas Sheet Metal Works, Inc., executed a general assignment for the benefit of creditors.

CONCLUSIONS OF LAW

A. Petitioner, Arthur Spiegel, is a person who willfully failed to collect or truthfully account for and pay over personal income taxes withheld by Atlas Sheet Metal Works, Inc. during 1974 and 1975, and as such, is subject to a penalty in accordance with the meaning and intent of section 685(g) of the Tax Law.

B. That the petition of Arthur Spiegel is denied and the Notice of Deficiency issued March 28, 1977 for \$35,560.56 is sustained.

DATED: Albany, New York

JUN 19 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER