

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
Hebert Webster

:

:

: 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 :
7/1/75-7/31/77

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

Hebert Webster
6531 N. 44th Ave.
Glendale, AZ 85301

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.

Cornie A. Haglund

J. Vredenburg

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

June 5, 1981

Hebert Webster
6531 N. 44th Ave.
Glendale, AZ 85301

Dear Mr. Webster:

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	:	
	:	
HERBERT WEBSTER	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Period	:	
July 1, 1975 through July 31, 1977.	:	

Petitioner, Herbert Webster, 6531 North 44th Avenue, Glendale, Arizona 85301, 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 July 1, 1975 through July 31, 1977 (File No. 24264).

Petitioner advised the State Tax Commission in writing, received October 3, 1980, that he waived a formal hearing and submitted the case to the State Tax Commission upon the entire record in the file. The State Tax Commission renders the following decision, after due consideration of said record.

ISSUE

Whether petitioner was a person required to collect, truthfully account for and pay over New York State income taxes withheld from wages of employees of Good News Taxi Service, Inc. for the period July 1, 1975 through July 31, 1977.

FINDINGS OF FACT

1. On August 28, 1978, the Audit Division issued a Notice of Deficiency against petitioner, Herbert Webster, asserting a penalty equal to the amount of the unpaid New York State withholding taxes due from Good News Taxi Service, Inc. for the years 1975, 1976 and 1977 in the amount of \$8,311.08. On August 8, 1980 the Withholding Tax Unit advised that the liability of Good News Taxi Service, Inc. has been reduced to \$6,816.86.

2. In May of 1975, petitioner, Herbert Webster, and one James Lanzerio formed a partnership, the Good News Taxi Service Co., which subsequently was incorporated as Good News Taxi Service, Inc. in September of 1975. Each received 50 shares of stock. Herbert Webster invested his money in the firm and James Lanzerio, because of his experience, ran the business. Herbert Webster worked in sales and customer relations. Petitioner acknowledged that during the second year of operation, after the Internal Revenue Service threatened seizure of assets of the corporation, he found out that State and Federal payroll taxes were not being paid. The corporation filed for bankruptcy under Chapter 11 of The Bankruptcy Act. In April 1977, James Lanzerio was removed by the bankruptcy court because of his failure to pay taxes. Robert Ehler, an accountant, was approved to aid in the business and during the few months of continued operation some \$7,000.00 of Federal taxes were paid, as were some State taxes. The records and cancelled checks of the bankrupt corporation are in the possession of the trustee in bankruptcy. There were bank accounts with the Marine Midland Bank, Gardenville Branch, Manufacturers Traders Trust Co., Bank of Buffalo and the Liberty Bank. Petitioner claimed that he was not authorized to sign checks during the time taxes were not paid. Photocopies of IT-2101, Employers Return -- Personal Income Tax Withheld for the Good News Taxi Service, Inc. which were filed for the period in issue and for which no remittance was made were all signed by James N. Lanzerio, vice-president.

CONCLUSIONS OF LAW

A. That Good News Taxi Service, Inc. was an employer required to deduct withholding taxes due from its employees' wages for the period July 1, 1975 through July 31, 1977 within the meaning and intent of section 671 of the Tax Law.

B. That petitioner Herbert Webster knew or should have known, that Good News Taxi Service, Inc. failed to pay to the Audit Division the taxes withheld for the period July 1, 1975 through July 31, 1977 which taxes constitute trust funds pursuant to section 675 of the Tax Law.

C. That petitioner, Herbert Webster, was a person required to collect, truthfully account for and pay over the withholding taxes due from Good News Taxi Service, Inc., within the meaning and intent of section 685(n) of the Tax Law.

D. That petitioner, Herbert Webster, willfully failed to collect, truthfully account for and pay over the taxes withheld by Good News Taxi Service, Inc. during the period July 1, 1975 through July 31, 1977 within the meaning and intent of section 685(g) of the Tax Law. [Levin v. Gallman, 42 N.Y.2d 32, 396 N.Y.S.2d 623 (1977)].

E. That the Audit Division is instructed to modify the Notice of Deficiency issued on August 28, 1978 against Herbert Webster in accordance with the memorandum of August 8, 1980 reducing the liability to \$6,816.86, and that except as so modified the Notice is otherwise sustained and the petition of Herbert Webster is in all other respects denied.

DATED: Albany, New York

JUN 5 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER