

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :

of :

Joseph C. Worth, Jr. :

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 :
1970 - 1971. :

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 13th day of November, 1981, he served the within notice of Decision by certified mail upon Joseph C. Worth, Jr., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Joseph C. Worth, Jr.
4435 Saddlebag Trail
Scottsdale, AZ 85251

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
13th day of November, 1981.

Carrie A. Hegelund

J. Vredenburg

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

November 13, 1981

Joseph C. Worth, Jr.
4435 Saddlebag Trail
Scottsdale, AZ 85251

Dear Mr. Worth:

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 :
JOSEPH C. WORTH, JR. : DECISION
for Redetermination of a Deficiency or for :
Refund of Personal Income Tax under Article 22 :
of the Tax Law for the Years 1970 and 1971. :

Petitioner, Joseph C. Worth, Jr., 4435 North Saddlebag Trail, Scottsdale, Arizona 85251, 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 1970 and 1971 (File No. 16055).

The petitioner has requested, in writing, that this matter be submitted to the Tax Commission for a decision without the necessity of a formal hearing.

The State Tax Commission, based upon the record as it is presently constituted, renders the following decision.

ISSUES

I. Whether petitioner was a "person" required to collect, account for and pay over withholding tax due from Photo Chemical Products, Inc.

II. Whether petitioner wilfully failed to collect, account for and pay over such tax.

III. Whether the petitioner is liable to a penalty equal to the total amount of tax collected but not paid over by Photo Chemical Products, Inc. for the years 1970 and 1971.

FINDINGS OF FACT

1. During the period from December 8, 1968 through January 31, 1971 petitioner was president, general manager and a director of Photo Chemical Products, Inc.

2. For the year 1970 Photo Chemical Products, Inc. filed a Reconciliation of Personal Income Tax Withheld (Form IT-2103) indicating \$13,374.02 personal income tax withheld from employee wages and \$1,779.66 paid, leaving a balance due unpaid in the amount of \$11,594.36.

3. For the period January 1, 1971 through March 31, 1971, the corporation filed semi-monthly withholding tax returns indicating personal income tax withheld from employees' wages amounting to \$1,803.83 for the period January 1, 1971 through March 31, 1971, but did not remit the withholding taxes due.

4. The corporation ceased operations on May 26, 1971.

5. Petitioner was one of three officers who had the right and did sign payroll and other checks on behalf of the corporation .

6. Petitioner signed returns and paid tax for the corporation through the fourth quarter of 1970.

7. Petitioner resigned on February 1, 1971 because he objected to the nonpayment of withholding taxes.

8. C.O.D. charges, materials, utilities, rent and other direct costs of running the business of the corporation were paid during the period the tax liability for withholding tax was accruing and unpaid.

9. On November 12, 1971 a notice and demand for the calendar year 1970 was issued against Photo Chemical Products, Inc. for unpaid withholding tax, interest and penalty in the amount of \$15,885.21.

10. On October 30, 1972 the Income Tax Bureau issued a Statement of Deficiency against petitioner Joseph C. Worth, Jr. for the withholding tax period February 15 to December 31, 1970 in the amount of \$11,594.36 and for the period January 1 to March 31, 1971 in the amount of \$1,803.83, for a total of \$13,398.19. Accordingly, a Notice of Deficiency was issued against petitioner on October 30, 1972 for \$13,398.19. The petitioner timely filed a petition for redetermination of said deficiency.

CONCLUSIONS OF LAW

A. That section 685(g) of the Tax Law provides, in part, that any person required to collect, truthfully account for and pay over withholding tax imposed by the Personal Income Tax Law who wilfully fails to collect such tax or truthfully account for and pay over such tax, shall be liable to a penalty equal to the total amount of tax 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) as including any individual, corporation or partnership or an officer or employee of any corporation who, as such officer or employee, is under a duty to perform the act in respect of which the violation occurs.

C. That the petitioner, as president and director of Photo Chemical Products, Inc. from January 1, 1970 through January 31, 1971 was a person as defined in section 685(n) of the Tax Law.

D. That the petitioner wilfully failed to truthfully account for and pay over withholding tax on behalf of Photo Chemical Products, Inc. for the period January 1, 1970 through January 31, 1971 within the intent and meaning of section 685(g) of the Tax Law. (Levin v. Gallman, 42 N.Y.2d 32.)

E. That petitioner was not liable for any withholding taxes after January 31, 1971.

F. That the Audit Division is directed to modify and correct the Notice of Deficiency by eliminating therefrom the penalty attributable to any withholding tax due after January 31, 1971.

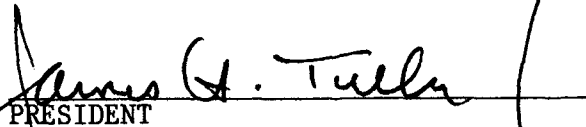
G. That petitioner is not relieved from liability under section 685(g) of the Tax Law because another officer or officers may be jointly and severally liable.

H. That the petition of Joseph C. Worth, Jr. is granted to the extent indicated in Conclusions of Law "E" and "F" and in all other respects is denied.

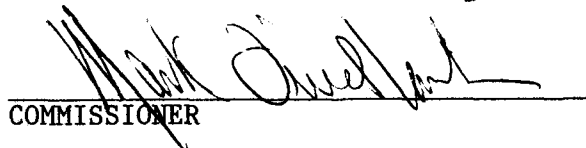
DATED: Albany, New York

NOV 13 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

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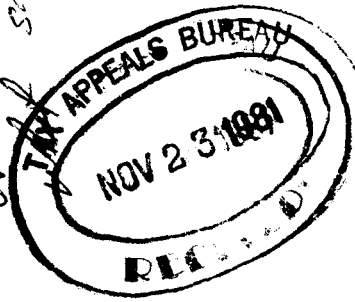
STATE OF NEW YORK
State Tax Commission
TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N. Y. 12227

Joseph C. Worth, Jr.
4435 Saddlebag Trail
Scottsdale, AZ 85251

CERTIFIED

34-3468676

MAIL



BA
12/2/81
Sent

unknown # B/A
Sent

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

November 13, 1981

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4435 Saddlebag Trail
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cc: Petitioner's Representative

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STATE OF NEW YORK

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In the Matter of the Petition
of
JOSEPH C. WORTH, JR.
for Redetermination of a Deficiency or for
Refund of Personal Income Tax under Article 22
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B. That section 685(n) of the Tax Law defines the word "person" for the purpose of section 685(g) as including any individual, corporation or partnership or an officer or employee of any corporation who, as such officer or employee, is under a duty to perform the act in respect of which the violation occurs.

C. That the petitioner, as president and director of Photo Chemical Products, Inc. from January 1, 1970 through January 31, 1971 was a person as defined in section 685(n) of the Tax Law.

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E. That petitioner was not liable for any withholding taxes after January 31, 1971.

F. That the Audit Division is directed to modify and correct the Notice of Deficiency by eliminating therefrom the penalty attributable to any withholding tax due after January 31, 1971.

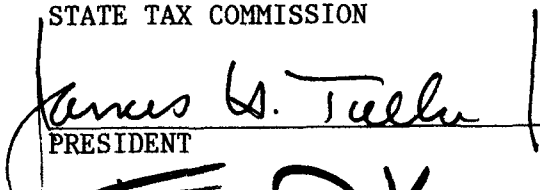
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DATED: Albany, New York

NOV 13 1981

STATE TAX COMMISSION


PRESIDENT


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COMMISSIONER