

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
Alfred Breslof	:	
for Redetermination of a Deficiency or a Revision	:	AFFIDAVIT OF MAILING
of a Determination or a Refund of Personal Income	:	
Tax under Articles 22 and 30 of the Tax Law and	:	
Chapter 46, Title T of the Administrative Code of	:	
the City of New York for the Years 1976 & 1978.	:	

State of New York
County of Albany

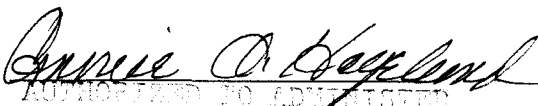
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 6th day of October, 1982, he served the within notice of Decision by certified mail upon Alfred Breslof, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

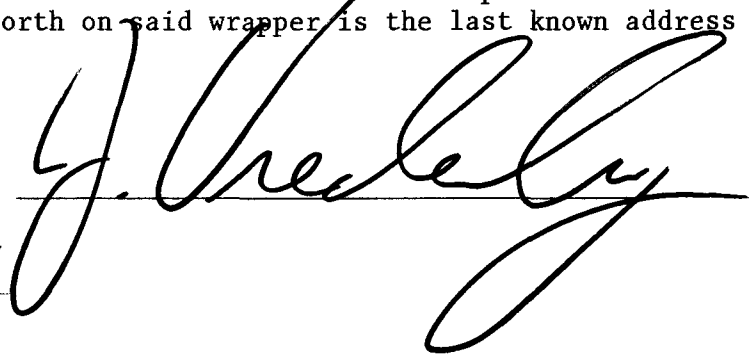
Alfred Breslof
3410 B Paul Ave.
New York, NY 10468

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
6th day of October, 1982.


ANNE A. HEGGEN
CLERK OF THE COMMISSIONER OF TAXES
SECTION 174



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

October 6, 1982

Alfred Breslof
3410 B Paul Ave.
New York, NY 10468

Dear Mr. Breslof:

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 and 1312 of the Tax Law & Chapter 46, Title T of the Administrative Code of the City of New York, 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
Law Bureau - Litigation Unit
Albany, New York 12227
Phone # (518) 457-2070

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

ALFRED BRESLOF

DECISION

for Redetermination of a Deficiency or for
Refund of Personal Income Tax under Articles 22 :
and 30 of the Tax Law and Chapter 46, Title T :
of the Administrative Code of the City of New :
York for the Years 1976 and 1978.

Petitioner, Alfred Breslof, 3410 B Paul Avenue, New York, New York 10468, filed a petition for redetermination of a deficiency or for refund of personal income tax under Articles 22 and 30 of the Tax Law and Chapter 46, Title T of the Administrative Code of the City of New York for the years 1976 and 1978 (File No. 26993).

A small claims hearing was held before William Valcarcel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 29, 1981 at 1:15 P.M. Petitioner appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (Irwin Levy, Esq., of counsel).

ISSUE

Whether petitioner is liable for 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 withholding taxes.

FINDINGS OF FACT

1. Palmer Home Outfitters, Inc. ("Palmer") filed Forms IT-2101, Employer's Return of Tax Withheld, for the following periods:

February 1, 1976 to February 29, 1976	-	\$55.60
July 1, 1976 to July 31, 1976	-	18.30
March 1, 1978 to March 31, 1978	-	12.30
April 1, 1978 to April 30, 1978	-	12.30
May 1, 1978 to May 31, 1978	-	9.05

No payments were made with the returns.

2. On March 13, 1979, the Audit Division issued a Notice of Deficiency in the sum of \$107.55, asserting a penalty in accordance with section 685(g) of the Tax Law against petitioner, Alfred Breslof, as a person who willfully failed to collect, truthfully account for and pay over the withholding taxes due from Palmer.

3. Petitioner, Alfred Breslof, was secretary/treasurer of Palmer. He signed the IT-2101's submitted for the periods stated in Finding of Fact "1", above. He had check-signing authority. He claimed all taxes were paid. He stated that Palmer was transferred to an attorney for the benefit of creditors and the attorney had all the books and records. Further, he stated that many papers and data of the company were destroyed or lost during the riots and blackout in Harlem in July, 1977. No checks or other documentary evidence were submitted to show that withholding taxes were paid to the State.

CONCLUSIONS OF LAW

A. That the personal income tax imposed by Article 30 of the Tax Law and Chapter 46, Title T of the Administrative Code of the City of New York is, by its own terms, tied into and contains essentially the same provisions as Article 22 of the Tax Law. Therefore, in addressing the issues presented herein, unless otherwise specified, all references to particular sections of Article 22 shall be deemed references (though uncited) to the corresponding sections of Article 30 of the Tax Law and Chapter 46, Title T of the Administrative Code of the City of New York.

B. That petitioner, Alfred Breslof, was a person who was required to collect, truthfully account for and pay over the New York State and City personal income taxes withheld by Palmer within the meaning and intent of section 685(n) of the Tax Law. Accordingly, he is liable for a penalty equal to such tax in accordance with section 685(g) of the Tax Law.

C. That the petition of Alfred Breslof is denied and the Notice of Deficiency dated March 13, 1979 is sustained.

DATED: Albany, New York

STATE TAX COMMISSION

OCT 06 1982

ACTING PRESIDENT

COMMISSIONER

COMMISSIONER