

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of

Gerald H. Faulkner

:

:

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 :
1976 - 1977.

State of New York
County of Albany

Connie Hagelund, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 9th day of April, 1982, she served the within notice of Decision by certified mail upon Gerald H. Faulkner, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Gerald H. Faulkner
44 N. Grove St.
Freeport, NY 11520

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
9th day of April, 1982.

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Gerald H. Faulkner : 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 :
1976 - 1977.

State of New York
County of Albany

Connie Hagelund, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 9th day of April, 1982, she served the within notice of Decision by certified mail upon Bruce A. Mina the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Bruce A. Mina
190 E. Main St.
Huntington, NY 11743

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
9th day of April, 1982.

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

April 9, 1982

Gerald H. Faulkner
44 N. Grove St.
Freeport, NY 11520

Dear Mr. Faulkner:

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
Law Bureau - Litigation Unit
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Bruce A. Mina
190 E. Main St.
Huntington, NY 11743
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
GERALD H. (JERRY) FAULKNER	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Taxes under Article 22	:	
of the Tax Law for the Years 1976 and 1977.	:	

Petitioner Gerald H. (Jerry) Faulkner, 44 N. Grove Street, Freeport, New York 11520, filed a petition for redetermination of a deficiency or for refund of personal income taxes under Article 22 of the Tax Law for the years 1976 and 1977 (File No. 23194).

A small claims hearing was held before Judy M. Clark, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 4, 1981 at 10:45 A.M. Petitioner appeared by Bruce A. Mina, CPA. The Audit Division appeared by Ralph J. Vecchio, Esq. (Kevin Cahill, Esq., of counsel).

ISSUE

Whether petitioner was a person required to collect, truthfully account for and pay over New York State withholding taxes of Golden Aquarius, Inc. during the years 1976 and 1977.

FINDINGS OF FACT

1. By Statement of Deficiency and Notice of Deficiency dated July 31, 1978, the Audit Division asserted a penalty of \$931.30 against petitioner, Jerry Faulkner, pursuant to section 685(g) of the Tax Law related to unpaid withholding taxes of Golden Aquarius, Inc. for the following periods:

<u>TAX PERIOD</u>	<u>AMOUNT</u>
6/1/76 - 6/30/76	\$127.00
8/1/76 - 12/31/76	635.00
1/1/77 - 2/11/77	169.30
TOTAL	<u>\$931.30</u>

2. It was the Audit Division's position that petitioner was a person required to collect, truthfully account for and pay over withholding taxes due from Golden Aquarius, Inc. within the meaning of section 685(n) of the Tax Law, and therefore liable under section 685(g) of the Tax Law for a penalty equal to the total amount of the tax not accounted for and paid over.

3. Petitioner was a salesman for and investor in Golden Aquarius, Inc. During 1976, petitioner became involved in the management of the corporation. Petitioner signed two employer's returns for personal income tax withheld during 1976 as vice-president.

4. Petitioner does not deny that the taxes are due for the periods in 1976. Petitioner contended, however, that Golden Aquarius, Inc. ceased its operation on December 31, 1976. Petitioner offered no documentary evidence in support of his contention.

5. Petitioner was not present to offer any testimony regarding authority to sign checks or the ability to hire and fire any employees.

CONCLUSIONS OF LAW

A. That petitioner has failed to sustain the burden of proof, as required by section 689(e) of the Tax Law, in establishing that Golden Aquarius Inc. ceased operation on December 31, 1976.

B. That petitioner, Gerald H. (Jerry) Faulkner, was a person under a duty to collect, truthfully account for and pay over personal income taxes withheld from the employees of Golden Aquarius, Inc. within the meaning of section

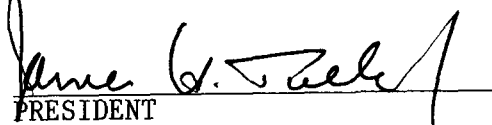
685(n) and is therefore subject to the penalty asserted pursuant to section 685(g) of the Tax Law.

C. That the petition of Gerald H. (Jerry) Faulkner is denied and the Notice of Deficiency issued July 31, 1978 is sustained.


DATED: Albany, New York

APR 09 1982

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER