

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition  
of  
George Faust

:  
:  
: 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 :  
1973 & 1974.

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 26th day of March, 1982, he served the within notice of Decision by certified mail upon George Faust, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

George Faust  
2096 Canary Rd.  
Brooklyn, NY 11236

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  
26th day of March, 1982.

Annie A. Hageland

Jay Vredenburg

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition  
of  
George Faust

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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 :  
1973 & 1974.

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 26th day of March, 1982, he served the within notice of Decision by certified mail upon Edward Hertenstein the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Edward Hertenstein  
99 John Street  
New York, NY 10038

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  
26th day of March, 1982.

Annice A. Hagelund

J. Vredenburg

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

March 26, 1982

George Faust  
2096 Canary Rd.  
Brooklyn, NY 11236

Dear Mr. Faust:

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  
Edward Hertenstein  
99 John Street  
New York, NY 10038  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition  
of  
GEORGE FAUST  
for Redetermination of a Deficiency or for  
Refund of Personal Income Tax under Article 22  
of the Tax Law for the Years 1973 and 1974.

DECISION

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Petitioner, George Faust, a/k/a George Feigenbaum, 1801 69th Street, Brooklyn, New York, 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 1973 and 1974 (File No. 16373).

A formal hearing was held before James Prendergast, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on September 22, 1978 at 10:45 a.m. and thereafter was continued before Edward Goodell, Hearing Officer, at the same office November 28, 1978 at 2:45 p.m. Petitioner appeared by Edward Hertenstein. The Audit Division appeared by Peter Crotty, Esq. (Paul Lefebvre, Esq., of counsel).

ISSUE

Whether petitioner is liable to a penalty equal to the unpaid withholding taxes of B P & W Heating Corp. for 1973 and 1974.

FINDINGS OF FACT

1. On May 24, 1976, a Notice of Deficiency and Statement of Deficiency for \$10,218.76 were issued to the petitioner, George Faust, pursuant to sections 685(g) and 685(n) of the Tax Law on the grounds that he had willfully failed to collect, account for and pay over withholding taxes of B P & W Heating Corp.

2. On June 28, 1976 another Notice of Deficiency and Statement of Deficiency were issued to the petitioner, on the grounds that he had willfully failed to

collect, account for and pay over withholding taxes of B P & W Heating Corp. in the amount of \$2,514.70 for the period beginning July 1, 1973 and ending September 30, 1973. This period was omitted from the earlier Notice of Deficiency and Statement of Deficiency issued May 24, 1976.

3. Petitioner filed a petition for redetermination of the deficiencies for tax years 1973 and 1974.

4. Although referred to in the aforesaid Statements of Deficiency as "B P & W Heating Corp.", the New York State Franchise Tax Report for the calendar year 1973 states the corporate name to be "BPW Plumbing Corp."

5. Said corporation was incorporated in New York State in 1971, began the conduct of business in 1972 and, during the period at issue, was engaged in the business of heating contractor with an office located at 208 McLean Avenue, Yonkers, New York.

6. The president of said corporation during the period at issue, was one Philip G. LoMedico. Mr. LoMedico, who died in December 1974, "was the owner of the company", and was the signatory, as president of said corporation, on the 1973 New York State Corporation Franchise Tax Report and of all the signed New York State employer's returns with respect to personal income tax withheld (Form IT-2101) during the period at issue. Philip LoMedico was also the signatory of the contract between the said corporation and Graphic Construction Corporation and of correspondence related thereto, although petitioner negotiated said contract.

7. In addition to Mr. LoMedico, the said corporation had three employees during the period at issue, namely "two girls" and petitioner, George Faust, also known as George Feigenbaum.

8. Petitioner, hired in 1973, acted as salesman for the said corporation during the period at issue, selling heating and plumbing installations and receiving as compensation for his services a salary against commissions.

9. Petitioner did not own any shares of the capital stock of said corporation, was not a director thereof and, although listed as secretary of the said corporation on its 1973 New York Corporation Franchise Tax Report, was only nominally an officer thereof, using the title of an officer as a means of facilitating sales.

Petitioner did not sign any corporate checks or corporate tax returns and his employment ended with the death of Mr. LoMedico.

CONCLUSIONS OF LAW

A. That petitioner, George Faust, is not a "person" as defined by section 685(n) of the Tax Law who was under a duty to collect, truthfully account for and pay over withholding taxes for 1973 and 1974 with respect to BPW Plumbing Corp., also known as B P & W Heating Corp. Therefore, petitioner is not liable to a penalty under section 685(g) of the Tax Law.


B. That the petition of George Faust is granted and the notices of deficiency issued May 24, 1976 and June 28, 1976 are cancelled.

DATED: Albany, New York

MAR 26 1982

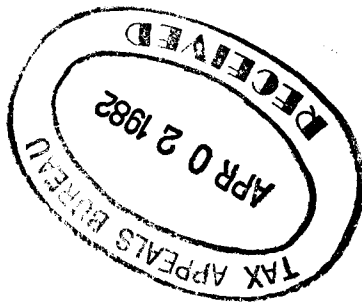
STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER

TA 26 (9-79)  
STATE OF NEW YORK  
State Tax Commission  
TAX APPEALS BUREAU  
STATE CAMPUS  
ALBANY, N. Y. 12227



*Man*

George Faust  
2096 Canary Rd.  
Brooklyn, NY 11236



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

March 26, 1982

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2096 Canary Rd.  
Brooklyn, NY 11236

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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  
Edward Hertenstein  
99 John Street  
New York, NY 10038  
Taxing Bureau's Representative



STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition  
of  
GEORGE FAUST  
for Redetermination of a Deficiency or for  
Refund of Personal Income Tax under Article 22  
of the Tax Law for the Years 1973 and 1974.

DECISION

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9. Petitioner did not own any shares of the capital stock of said corporation, was not a director thereof and, although listed as secretary of the said corporation on its 1973 New York Corporation Franchise Tax Report, was only nominally an officer thereof, using the title of an officer as a means of facilitating sales.

Petitioner did not sign any corporate checks or corporate tax returns and his employment ended with the death of Mr. LoMedico.

CONCLUSIONS OF LAW

A. That petitioner, George Faust, is not a "person" as defined by section 685(n) of the Tax Law who was under a duty to collect, truthfully account for and pay over withholding taxes for 1973 and 1974 with respect to BPW Plumbing Corp., also known as B P & W Heating Corp. Therefore, petitioner is not liable to a penalty under section 685(g) of the Tax Law.

B. That the petition of George Faust is granted and the notices of deficiency issued May 24, 1976 and June 28, 1976 are cancelled.

DATED: Albany, New York

MAR 26 1982

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER