

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Theodore Fisher :
AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of NYS & NYC Income :
Tax under Article 22 & 30 of the Tax Law for the :
Year 1976. :

State of New York
County of Albany

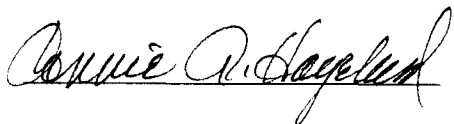
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 4th day of August, 1982, he served the within notice of Decision by certified mail upon Theodore Fisher, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

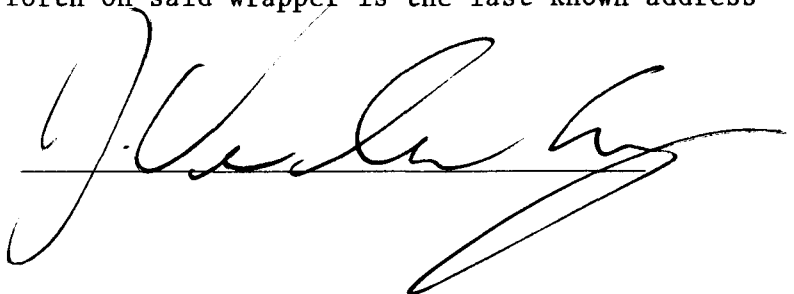
Theodore Fisher
82-42 210th St.
Hollis, NY 11364

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
4th day of August, 1982.





STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Theodore Fisher :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of NYS & NYC Income :
Tax under Article 22 & 30 of the Tax Law for the :
Year 1976. :

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 4th day of August, 1982, he served the within notice of Decision by certified mail upon Marvin Singer the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Marvin Singer
176-60 Union Tpke.
Flushing, NY 11366

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
4th day of August, 1982.

Connie A. Haglund

J. Vredenburg

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

August 4, 1982

Theodore Fisher
82-42 210th St.
Hollis, NY 11364

Dear Mr. Fisher:

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) 722 & 1312 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
Marvin Singer
176-60 Union Tpke.
Flushing, NY 11366
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
THEODORE FISHER	:	DECISION
for Redetermination of Deficiencies or for	:	
Refund of Personal Income Tax under Articles 22 :		
and 30 of the Tax Law for the Year 1976.	:	

Petitioner, Theodore Fisher, 82-42 210th Street, Hollis, New York 11364, filed petitions for redetermination of deficiencies or for refund of New York State personal income tax under Article 22 of the Tax Law and New York City personal income tax under Article 30 of the Tax Law for the year 1976 (File Nos. 20678 and 25283).

A small claims hearing was held before Allen Caplowaith, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 1, 1981 at 9:30 A.M. Petitioner appeared with Marvin Singer, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Irwin Levy, Esq., of counsel).

ISSUE

Whether petitioner, Theodore Fisher, is subject to a penalty as a person who willfully failed to collect, truthfully account for and pay over New York State and New York City withholding taxes due from Fisher Bookbinding Co., Inc.

FINDINGS OF FACT

1. Fisher Bookbinding Co., Inc. (hereinafter Fisher Bookbinding), 32-02 Queens Boulevard, Long Island City, New York, failed to pay over the New York State personal income taxes withheld from the wages of its employees for the period January 1, 1976 through February 20, 1976. Additionally, it failed to

pay over the New York City personal income taxes withheld from the wages of its employees for the period "February 1, 1976 through February 30, 1976". (Although February has less than thirty days, said period is assumed for the purpose of this hearing to represent the entire month of February, 1976.)

2. On July 25, 1977 the Audit Division issued a Statement of Deficiency in conjunction with a Notice of Deficiency against petitioner, Theodore Fisher, wherein a penalty was asserted pursuant to section 685(g) of the Tax Law, for an amount equal to the New York State withholding taxes due from Fisher Bookbinding of \$2,113.81, for the period January 1, 1976 through February 20, 1976. Subsequently, on December 18, 1978 a Statement of Deficiency and Notice of Deficiency were issued against petitioner asserting said penalty for an amount equal to the New York City withholding taxes due from Fisher Bookbinding of \$327.70, for the month of February, 1976. Said penalties were asserted on the ground that petitioner was a person required to collect, truthfully account for and pay over the New York State and New York City withholding taxes of Fisher Bookbinding, and that he willfully failed to do so.

3. During the periods at issue, petitioner was vice president of Fisher Bookbinding.

4. Petitioner contended that he was the production manager and was not involved with the financial matters of Fisher Bookbinding. He argued that his brother, Max Fisher (deceased), was the chief operating officer.

5. Petitioner was an authorized signatory for payroll checks. He signed payroll checks when his brother was absent, which was quite often.

6. Fisher Bookbinding ceased doing business sometime in 1976. Petitioner testified that prior to that time he was aware that the company was experiencing difficulty in meeting its payroll.

7. Petitioner claimed he owned no stock in Fisher Bookbinding. Although his brother, Max Fisher, had advised him that he was to be made a shareholder, petitioner contended that he never received such shares.

CONCLUSIONS OF LAW

A. That the New York City personal income tax imposed by Article 30 of the Tax Law 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.

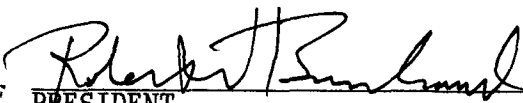
B. That petitioner, Theodore Fisher, has failed to sustain his burden of proof required pursuant to section 689(e) of the Tax Law to show that he was not a person required to collect, truthfully account for and pay over New York State and New York City personal income taxes withheld from the employees of Fisher Bookbinding Co., Inc. for the periods at issue. Accordingly, the penalties asserted pursuant to section 685(g) of the Tax Law are hereby sustained.

C. That the petition of Theodore Fisher is denied and the notices of deficiency dated July 25, 1977 and December 18, 1978 are hereby sustained.


DATED: Albany, New York

AUG 04 1982

STATE TAX COMMISSION


ACTING PRESIDENT


COMMISSIONER


COMMISSIONER