

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Evelyn Furman :
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 Year :
1976. :
_____ :

AFFIDAVIT OF MAILING

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 Evelyn Furman, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Evelyn Furman
22230 Hollyhock Trail
Boca Raton, FL 33433

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	:	
The Estate of Ira Furman	:	
c/o Evelyn Furman	:	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 Year	:	
1976.	:	

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 The Estate of Ira Furman, c/o Evelyn Furman the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

The Estate of Ira Furman
c/o Evelyn Furman
22230 Hollyhock Trail
Boca Raton, FL 33433

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.

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9th day of April, 1982.

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Evelyn Furman :

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 Year :
1976 :
_____:

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 Joseph Miller the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Joseph Miller
36 West 44th St.
New York, NY 10036

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

In the Matter of the Petition	:	
of	:	
The Estate of Ira Furman	:	
c/o Evelyn Furman	:	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 Year	:	
1976	:	

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 Joseph Miller the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Joseph Miller
36 West 44th St.
New York, NY 10036

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

Evelyn Furman
22230 Hollyhock Trail
Boca Raton, FL 33433

Dear Mrs. Furman:

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
Joseph Miller
36 West 44th St.
New York, NY 10036
Taxing Bureau's Representative

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

April 9, 1982

The Estate of Ira Furman
c/o Evelyn Furman
22230 Hollyhock Trail
Boca Raton, FL 33433

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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
Joseph Miller
36 West 44th St.
New York, NY 10036
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
THE ESTATE OF IRA FURMAN
c/o EVELYN FURMAN
for Redetermination of a Deficiency or for
Refund of Personal Income Tax under Article
22 of the Tax Law for the Year 1976.

DECISION

In the Matter of the Petition
of
EVELYN FURMAN
for Redetermination of a Deficiency or for
Refund of Personal Income Tax under Article
22 of the Tax Law for the Year 1976.

Petitioners, Evelyn Furman and the Estate of Ira Furman, 22230 Hollyhock Trail, Boca Raton, Florida 33433, filed petitions for redetermination of deficiencies or for refund of personal income tax under Article 22 of the Tax Law for the year 1976 (File No. 21951, 21952 and 23030).

A formal hearing was held before William J. Dean, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on August 26, 1981, at 10:45 A.M. Petitioners appeared by Joseph Miller, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Barry M. Bresler, Esq., of counsel).

ISSUES

I. Whether Evelyn Furman and Ira Furman were persons required to collect and pay over personal income tax withheld from the employees of Ira Furman & Co., Inc.

II. Whether Ira Furman was a person required to collect and pay over personal income tax withheld from the employees of Furman Air Freight.

FINDINGS OF FACT

1. By Notices of Deficiency and Statements of Deficiency dated January 30, 1978, the Audit Division notified Evelyn Furman and Ira Furman of deficiencies in the amount of \$8,252.00. The claims related to unpaid withholding taxes of Ira Furman & Co., Inc. (herein, "the corporation") for the withholding tax period September 11, 1976 through December 28, 1976.

2. By Notice of Deficiency and Statement of Deficiency dated June 26, 1978, the Audit Division notified Ira Furman of a deficiency in the amount of \$1,238.35 for withholding tax periods August 1, 1976 through September 10, 1976 and September 11, 1976 through December 28, 1976 related to unpaid withholding taxes of Furman Air Freight Corp.

3. At the formal hearing, the Audit Division acknowledged that as to the corporation, the amount in dispute had been reduced to \$2,654.80, and that as to Furman Air Freight Corp., the amount in dispute had been reduced to zero.

4. The corporation was engaged in the business of a foreign freight forwarder and customs house broker. Ira Furman owned 50 percent of the outstanding stock of the corporation and was both a director and president. After having suffered serious financial reverses, the corporation, on September 10, 1976, filed a petition for an arrangement under Chapter XI of the Bankruptcy Act.

5. At this time Mr. Furman was around 65 years old. He had been running the corporation for a period of 35 years. Because of his age and the severe difficulties encountered by the corporation during the period leading up to the filing for an arrangement, he and Mrs. Furman decided to sell their controlling

interest in the corporation to Michael P. Hilton and Edward J. Brown who were experts in revitalizing export and import companies in distress. Drafts of sale agreements were reduced to writing in September of 1976 and executed on November 11, 1976. (The corporation was subsequently adjudicated a bankrupt on December 21, 1976. Since the promissory notes signed by Messrs. Hilton and Brown for the purchase of the controlling interest in the corporation provided that payments were to begin six months after the date of entry of the final order confirming such arrangement as might be entered into between the corporation and its creditors, no payment was received by petitioners and no shares of the corporation actually passed to Messrs. Hilton and Brown.)

6. Subsequent to September 11, 1976 Mr. Furman played no role in the operation of the corporation, even though he continued to hold the title of President. Messrs. Brown and Hilton dismissed both the corporation's independent certified public accountant of thirty-five years standing and the comptroller worked at the direction of Messrs. Brown and Hilton.

7. Form 941 filed with the Internal Revenue Service on behalf of the corporation for the quarter ended December 31, 1976 was signed by "Weber Lipskie & Co. ... Acct for Trustee." Ira Furman came to learn of this firm only after receiving notices of unpaid employment withholding taxes from the Internal Revenue Service.

8. By affidavit sworn to on August 19, 1978 Mrs. Furman stated that she owned 50 percent of the stock of the corporation, and served as a director of the corporation, holding the office of secretary and at no time while she served as secretary of the corporation did she exercise responsibility of a financial nature.

CONCLUSIONS OF LAW

A. That Ira Furman and Evelyn Furman, subsequent to September 11, 1976, no longer exercised control over the financial affairs of the corporation.

B. That the Audit Division acknowledged at the formal hearing that as to Furman Air Freight Corp., the amount in dispute had been reduced to zero.

C. That by virtue of Finding of Fact "4" and Conclusion of Law "A" supra, the issue as to whether or not petitioners were responsible "persons" as defined by Tax Law section 685(n) is rendered moot.

D. That the petitions of Evelyn Furman and the Estate of Ira Furman are granted and the Notices of Deficiency directed to Evelyn Furman and Ira Furman, dated January 30, 1978 relating to Ira Furman & Co., Inc. are cancelled, and the Notice of Deficiency directed to Ira Furman dated June 26, 1978 relating to Furman Air Freight Corp. is cancelled.

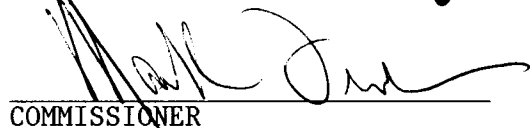
DATED: Albany, New York

APR 09 1982

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER