

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of		
Gene Greenspun	:	
		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	:	
1974 & 1975.	:	
	:	

State of New York
County of Albany

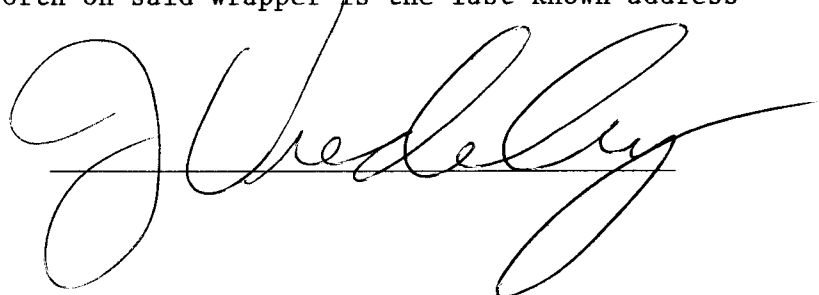
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 29th day of December, 1982, he served the within notice of Decision by certified mail upon Gene Greenspun, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Gene Greenspun
848 West State St.
Trenton, NJ 08618

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
29th day of December, 1982.


Jay Vredenburg

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

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Gene Greenspun :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
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Tax under Article 22 of the Tax Law for the Years :
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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 29th day of December, 1982, he served the within notice of Decision by certified mail upon Andrew M. Krisel the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Andrew M. Krisel
Berney & Zweben
299 Broadway
New York, NY 10007

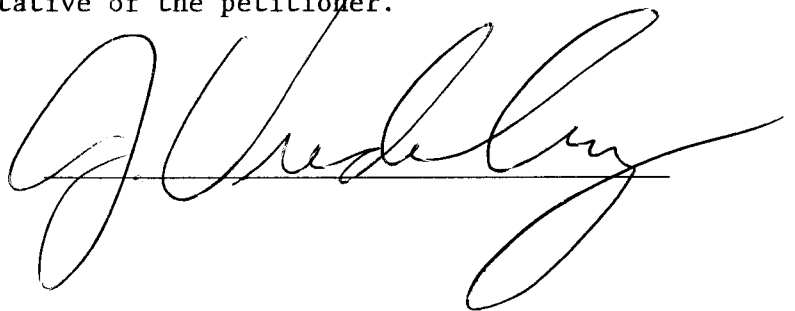
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

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
29th day of December, 1982.

Harry M. [illegible]

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174



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

December 29, 1982

Gene Greenspun
848 West State St.
Trenton, NJ 08618

Dear Mr. Greenspen:

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
Andrew M. Krisel
Berney & Zweben
299 Broadway
New York, NY 10007
Taxing Bureau's Representative

STATE TAX COMMISSION

DECISION

A formal hearing was held before Arthur Bray, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 11, 1982 at 4:40 P.M. Petitioner appeared by Berney & Zweben (Andrew M. Krisel, Esq., of counsel). The Audit Division appeared by Paul B. Coburn, Esq. (Patricia L. Brumbaugh, Esq., of counsel).

Whether petitioner is liable for the penalty asserted against him pursuant to section 685(g) of the Tax Law with respect to New York State withholding taxes due from Astor Metal Products Corp. for the years 1974 and 1975.

1. Astor Metal Products Corp. ("Astor") failed to pay New York State personal income tax withheld from the wages of its employees in the amount of \$1,186.20 for 1974 and \$4,608.67 for 1975.

2. On November 28, 1977, the Audit Division issued a Notice of Deficiency and a Statement of Deficiency against petitioner asserting a penalty equal to

the amount of unpaid New York State withholding tax due from Astor for the years 1974 and 1975.

3. Astor was engaged in the production of wire and sheet metal products such as record holders, television stands, shelves, umbrella stands, flower holders, wine racks, and log holders. Astor's products were fabricated out of steel, painted or plated, and then packed and shipped.

4. Astor was a subsidiary of Lehman-Bartel, an Arizona corporation. A Mr. Bartel was the president of Lehman-Bartel.

5. Petitioner became employed by Astor in September or October of 1974 as a production manager. At this time, a Mr. Hutcher was president of Astor. As a production manager, petitioner's duties included scheduling production, instructing employees, increasing production, reducing defects, and devising better ways to pack and ship a product. Petitioner's duties did not include financial obligations, such as issuing checks.

6. In June, 1975, petitioner went to the Republic of the Philippines to work for Lehman-Bartel.

7. In September or October of 1975, petitioner received telephone calls from Mr. Bartel and Mr. Hutcher requesting him to return to Astor as soon as possible because Astor was having serious difficulties. When petitioner returned to Astor, his supervisors were Mr. Bartel and Mr. Hutcher. At this time, the president of Astor was a Mr. Jarema.

8. In October 1975, Mr. Hutcher and Mr. Hutcher's attorney, Mr. Lambert, called petitioner and Mr. Jarema into an office for a meeting. At this time, petitioner was informed that Astor was having financial difficulties and that Astor would file for bankruptcy pursuant to Chapter 11 of Title 11 of the United States Code. A day or two after this meeting, Mr. Lambert, Mr. Jarema

and petitioner went to Federal Court in Brooklyn and filed the bankruptcy petition.

9. About a month after Astor filed for bankruptcy, Mr. Jamera was dismissed from his position as president of Astor. Thereafter, petitioner was directed by Mr. Hutcher and Mr. Hutcher's attorney to act as the corporate officer who would handle the bankruptcy proceedings. In this capacity petitioner would receive a set of documents from Astor's secretary, meet with Mr. Lambert, and with Mr. Lambert go to Federal Court in Brooklyn to deliver the papers. Petitioner performed this function under the impression that he was just acting as a representative of Astor to assist in the bankruptcy proceedings. Petitioner was called upon by his superiors to sign voluminous documents. Petitioner was not aware of what documents he signed.

10. When the bankruptcy proceedings were commenced, petitioner did not acquire any additional responsibilities for the financial obligations of the company, except for the bankruptcy proceedings.

11. Astor's payroll procedure during the bankruptcy proceedings consisted of first having the bookkeeper make a list of the amount each employee, including petitioner, was to be paid. The bookkeeper would then draft a check and a cover letter and hand these items in a sealed envelope to petitioner. Petitioner would then take the envelope to Mr. Hutcher, whereupon Mr. Hutcher would make out a check in the amount called for drawn on the account of a business known as Dynamic House. Mr. Hutcher's assistant would then cash the check and give the cash to Mr. Hutcher. Mr. Hutcher would then give petitioner the cash. Thereafter, petitioner gave the cash to Astor's bookkeeper. After Astor's bookkeeper counted the cash, she would distribute the cash to Astor's employees, including petitioner.

12. At one point during the bankruptcy proceedings, the judge ordered that all employees of Astor were to receive one-half pay for their work. In accordance with the court's order, petitioner received one-half pay.

13. Petitioner was never a creditor or shareholder of Astor.

14. Petitioner did not hire or fire employees at Astor.

15. The books and records of Astor were kept at a plant in Long Island.

16. Astor ceased operating in or about May, 1976.

CONCLUSIONS OF LAW

A. That petitioner, Gene Greenspun, although an officer of Astor Metal Products Corp., was not a person required to collect, truthfully account for and pay over withholding taxes within the meaning of sections 685(g) and 685(n) of the Tax Law. Moreover, petitioner did not willfully attempt to evade or defeat the tax or the payment thereof.

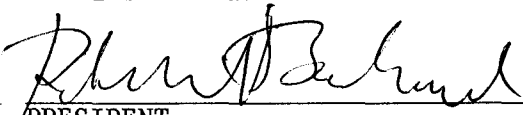
B. That the penalty under section 685(g) of the Tax Law was improperly asserted against petitioner.

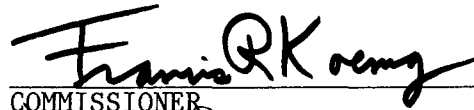
C. That the petition of Gene Greenspun is granted and the Notice of Deficiency issued against him November 28, 1977 is cancelled.

DATED: Albany, New York

DEC 29 1982

STATE TAX COMMISSION

ACTING 
PRESIDENT


COMMISSIONER


COMMISSIONER