

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
Steven Hoffenberg

:

: 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 January, 1982, he served the within notice of Decision by certified mail upon Steven Hoffenberg, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

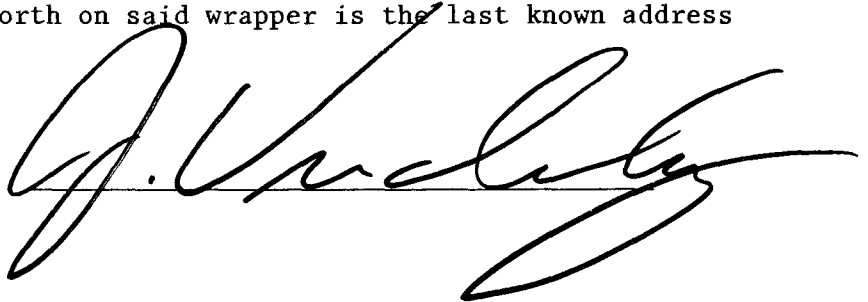
Steven Hoffenberg
1790 Broadway
New York, NY 10019

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 January, 1982.





STATE OF NEW YORK
STATE TAX COMMISSION

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of :
Steven Hoffenberg : AFFIDAVIT OF MAILING

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Tax under Article 22 of the Tax Law for the Years :
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State of New York
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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 January, 1982, he served the within notice of Decision by certified mail upon William H. Harrington the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

William H. Harrington
Trager, Glass & Co.
1790 Broadway
New York, NY 10019

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 January, 1982.

Annice G. Haglund

J. Vredenburg

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

January 29, 1982

Steven Hoffenberg
1790 Broadway
New York, NY 10019

Dear Mr. Hoffenberg:

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
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
William H. Harrington
Trager, Glass & Co.
1790 Broadway
New York, NY 10019
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
STEVEN HOFFENBERG
for Redetermination of a Deficiency or for
Refund of Personal Income Tax under Article 22
of the Tax Law for the years 1974 and 1975.

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DECISION

Petitioner, Steven Hoffenberg, 1790 Broadway, New York, New York 10019, 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 1974 and 1975 (File No. 18595).

A formal hearing was commenced before Doris Steinhardt, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on October 9, 1980 at 10:00 A.M. and continued to conclusion before Arther Bray, Hearing Officer, at the same offices on July 21, 1981. Petitioner appeared by Trager, Glass & Co. (William H. Havighorst, C.P.A.) at the hearing held on October 9, 1980. Petitioner did not appear at the hearing held on July 21, 1981. The Audit Division appeared by Ralph J. Vecchio, Esq. (Samuel Freund, Esq., of counsel).

ISSUE

Whether petitioner is subject to a penalty in accordance with section 685(g) of the Tax Law as a person who willfully failed to collect, truthfully account for and pay over withholding taxes for the years 1974 and 1975.

FINDINGS OF FACT

1. Union Electric Product Corporation ("Union") failed to pay New York State personal income tax withheld from the wages of its employees in the

amount of \$4,314.91 for the period January 1, 1974 to December 31, 1974 and in the amount of \$3,252.10 for the period January 1, 1975 to August 28, 1975.

2. On February 28, 1977 the Audit Division issued a Notice of Deficiency and Statement of Deficiency against petitioner asserting a penalty equal to the amount of the unpaid New York State withholding tax due from Union for the periods January 1, 1974 to December 31, 1974 and January 1, 1975 to August 28, 1975.

3. Petitioner timely filed a petition arguing, inter alia: that Union had sufficient assets to pay the withholding tax due but was prevented from doing so by operation of the Bankruptcy Law; that when a corporation has sufficient assets to pay the withholding taxes due, a corporate officer should not be held liable under Tax Law §685(g); that the penalty imposed by Tax Law §685(g) is dischargeable in bankruptcy; and that petitioner did not willfully fail to pay over withholding taxes.

4. At the hearing held on October 9, 1980 the following documents were offered and received in evidence: Notice of Deficiency, Statement of Deficiency, Petition with attachments, and Answer. Petitioner, though represented by a certified public accountant, requested an adjournment in order to obtain representation by an attorney-at-law. Subsequently, petitioner's request was granted by the New York State Tax Commission.

5. A final notice of a formal hearing was sent to petitioner notifying him that a hearing was scheduled to be held on July 21, 1981 at 10:45 A.M. At the hearing convened on July 21, 1981, neither petitioner nor a representative of petitioner appeared.

CONCLUSION OF LAW

A. That petitioner 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 who

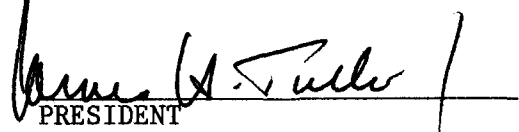
willfully failed to collect, truthfully account for and pay over the New York State withholding taxes due from Union Electric Product Corporation. Accordingly, the penalty asserted pursuant to section 685(g) of the Tax Law is sustained (see Matter of Tivolacci v. State Tax Commission, 77 A.D. 2d 759).

B. That the petition of Steven Hoffenberg is denied and the Notice of Deficiency dated February 28, 1977 is sustained.

DATED: Albany, New York

JAN 29 1982

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER