

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Joseph Neuhaus :
for Redetermination of Deficiencies or for Refund :
of Personal Income Tax under Article 22 of the Tax :
Law and Chapter 46, Title T of the Administrative :
Code of the City of New York for the Year 1977. :
AFFIDAVIT OF MAILING

State of New York
County of Albany

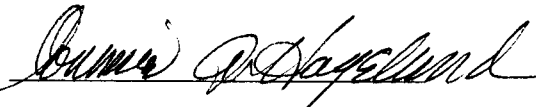
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 3rd day of December, 1982, he served the within notice of Decision by certified mail upon Joseph Neuhaus, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Joseph Neuhaus
68 Heron St.
Long Beach, NY 11561

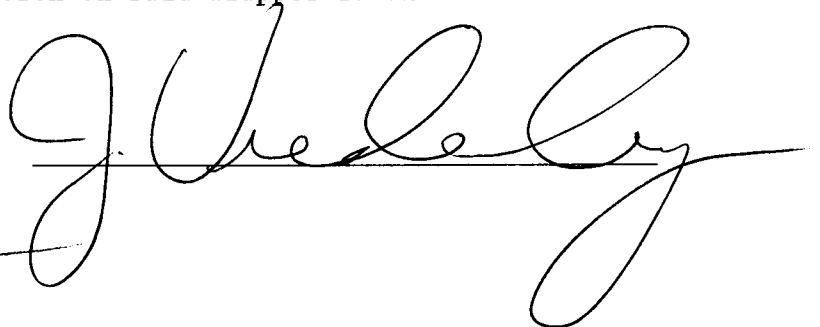
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

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
3rd day of December, 1982.



AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174



STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Joseph Neuhaus :
AFFIDAVIT OF MAILING
for Redetermination of Deficiencies or for Refund :
of Personal Income Tax under Article 22 of the Tax :
Law and Chapter 46, Title T of the Administrative :
Code of the City of New York for the Year 1977. :

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 3rd day of December, 1982, he served the within notice of Decision by certified mail upon Lester E. Levin the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Lester E. Levin
Rifkin, Levin & Lebowitz
501 5th Ave.
New York, NY 10017

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
3rd day of December, 1982.




AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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

December 3, 1982

Joseph Neuhaus
68 Heron St.
Long Beach, NY 11561

Dear Mr. Neuhaus:

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 & 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
Lester E. Levin
Rifkin, Levin & Lebowitz
501 5th Ave.
New York, NY 10017
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
JOSEPH NEUHAUS	:	DECISION
for Redetermination of Deficiencies or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law and Chapter 46, Title T of the	:	
Administrative Code of the City of New York	:	
for the Year 1977.	:	

Petitioner, Joseph Neuhaus, 68 Heron Street, Long Beach, New York 11561, filed petitions for redetermination of deficiencies or for refund of personal income tax under Article 22 of the Tax Law and New York City personal income tax under Chapter 46, Title T of the Administrative Code of the City of New York for the year 1977 (File Nos. 25909 and 25910).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on February 5, 1982 at 9:00 A.M. Petitioner appeared by Lester E. Levin, CPA. The Audit Division appeared by Ralph J. Vecchio, Esq. (William Fox, Esq., of counsel).

ISSUE

Whether petitioner was a person required to collect, truthfully account for and pay over withholding taxes due from Dental Technicians Associates, Inc. for the withholding tax periods of January 1, 1977 to February 28, 1977, April 1, 1977 to April 30, 1977, May 1, 1977 to June 30, 1977 and July 16, 1977 to September 30, 1977.

FINDINGS OF FACT

1. Dental Technicians Associates, Inc., Rockville Centre, New York, failed to pay over New York State and City personal income taxes withheld from its employees' wages for the periods January 1, 1977 to February 28, 1977, April 1, 1977 to April 30, 1977, May 1, 1977 to June 30, 1977 and July 16, 1977 to September 30, 1977.

2. On November 27, 1978, the Audit Division issued a Statement of Deficiency against Joseph Neuhaus imposing a penalty equal to the amount of New York State and City withholding taxes due from Dental Technicians Associates, Inc. for the withholding periods of January 1, 1977 to February 28, 1977 and April 1, 1977 to April 30, 1977. This was done on the grounds that he was a person required to collect, truthfully account for and pay over said taxes and that he willfully failed to do so. Accordingly, on November 27, 1978 the Audit Division issued a Notice of Deficiency against him for \$4,058.65.

3. On January 29, 1979, the Audit Division issued a Statement of Deficiency against Joseph Neuhaus imposing a penalty equal to the amount of New York State and City withholding taxes due from Dental Technicians Associates, Inc. for the withholding periods of May 1, 1977 to June 30, 1977 and July 16, 1977 to September 30, 1977. This was done on the grounds that he was a person required to collect, truthfully account for and pay over said taxes and that he willfully failed to do so. Accordingly, on January 29, 1979, the Audit Division issued a Notice of Deficiency against him in the amount of \$6,643.68.

4. Joseph Neuhaus operated an organization called Caps Union Central Plans which administers dental plans for unions. Previously, he was a dental technician. He turned over his equipment worth \$20,000.00 to Dental Technicians Associates,

Inc. and received a one-third interest of the business. His son Phillip and one "Leff" were the other partners involved, and ran the business. The company's checking account required two of their three signatures. In 1977, the company ran into financial difficulties. A Federal withholding assessment was paid by the petitioner with contribution by his son.

CONCLUSIONS OF LAW

A. That the Personal Income Tax imposed by Chapter 46, Title T of the Administrative Code of the City of New York 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 Chapter 46, Title T.

B. That an examination of the instant record establishes that petitioner was an officer of the corporation, was authorized to sign checks and owned one-third of the stock. That while petitioner did not participate in the management of the business he failed to meet his burden that he in fact was not "willful" in his responsibilities. The term "willful" as used in the statute means an act, default or conduct voluntarily done with knowledge that, as a result, trust funds belonging to the government will be used for other purposes. No showing of intent is necessary, only something more than accidental nonpayment is required. (Matter of Levin v. Gallman, 42 N.Y.2d 32.)

C. That petitioner, Joseph Neuhaus, was a person required to collect, truthfully account for and pay over New York State and City withholding taxes due from Dental Technicians Associates, Inc. for the periods in issue in accordance with the meaning and intent of sections 685(g) and (n) of the Tax Law.

D. That the petitions of Joseph Neuhaus are denied, and the notices of deficiency issued on November 27, 1978 and January 29, 1979 are sustained.

DATED: Albany, New York

STATE TAX COMMISSION

DEC 03 1982

ACTING PRESIDENT

COMMISSIONER

COMMISSIONER