

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
Edward Nassberg

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 :
1973. :

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 18th day of June, 1982, he served the within notice of Decision by certified mail upon Edward Nassberg, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Edward Nassberg
5 Beechwood Court
Dix Hills, NY 11746

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
18th day of June, 1982.

Carmine A. DeGiacca

J. Vredenburg

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :

of

Edward Nassberg :

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 :
1973. :

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 18th day of June, 1982, he served the within notice of Decision by certified mail upon Michael Rikon the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Michael Rikon
Rudick, Kirschuer & Rikon
150 Broadway
New York, NY 10038

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
18th day of June, 1982.

Garnice C. Blagden

J. Vredenburg

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

June 18, 1982

Edward Nassberg
5 Beechwood Court
Dix Hills, NY 11746

Dear Mr. Nassberg:

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
Michael Rikon
Rudick, Kirschuer & Rikon
150 Broadway
New York, NY 10038
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
EDWARD NASSBERG
for Redetermination of a Deficiency or for
Refund of Personal Income Tax under Article 22
of the Tax Law for the Year 1973.

:
:
:
:
:
:
:

DECISION

Petitioner, Edward Nassberg, 62 Woodmont Drive, Dix Hills, New York 11746, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1973 (File No. 15959).

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 May 5, 1981 at 2:45 P.M. Petitioner appeared by Michael Rikon, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Irwin Levy, Esq., of counsel).

ISSUE

Whether petitioner Edward Nassberg was a person required to collect, truthfully account for and pay over withholding taxes due from Palmer Plastics, Inc. for the year 1973.

FINDINGS OF FACT

1. On April 29, 1976 the Audit Division issued a Notice of Deficiency and Statement of Deficiency against petitioner, in the amount of \$8,048.35 for the tax year 1973. The statement asserted that petitioner was a person required to collect, truthfully account for and pay over withholding taxes due from Palmer Plastics, Inc. for the year 1973 pursuant to the provisions of subsections (g) and (n) of section 685 New York Tax Law.

2. The aforementioned statement of deficiency asserted the liability for the withholding period in sums as follows:

<u>WITHHOLDING TAX PERIODS</u>	<u>AMOUNT</u>
April 1 to April 15, 1973	\$1,404.51
May 1 to August 8, 1973	<u>6,643.84</u>
TOTAL DUE	\$8,048.35

3. The corporate employer was Palmer Plastics, Inc. ("Palmer"), the address of which was 1072 Avenue D, Brooklyn, New York.

4. Palmer was engaged in the business of manufacturing plastic toys.

5. The controlling interest in Palmer was owned by the Estate of Irving Wildstein. Stephen Wildstein was the co-executor and principal beneficiary of this estate.

6. The estate wished to sell this business.

7. In the spring of 1972 petitioner was asked by Robert Snyder and Philip Hixon, partners of Snyder-Hixon Associates, which was a venture capital partnership, if he was interested in an opportunity to participate in the purchase of Palmer.

8. Palmer was not doing well financially and Stephen Wildstein asked Snyder and Hixon about raising money for the company. Snyder and Hixon agreed that they would attempt to raise some money for the company if they could obtain an option to purchase Palmer's stock.

9. Petitioner expressed an interest and shortly thereafter, he along with Snyder-Hixon Associates, Stephen Wildstein and one Pasquele Iammatteo formed Winneco, Inc. ("Winneco"), a Delaware corporation (initially called Palmer Industries, Inc.), to effectuate the purchase of Palmer.

10. Nassberg, Snyder-Hixon Associates, Wildstein and Iammatteo entered into an agreement dated June 20, 1972, whereby they would purchase stock in Winneco.

11. Winneco's formation capital was as follows:

<u>NAME</u>	<u>NO. SHARES</u>	<u>PURCHASE PRICE</u>
Wildstein	333,333	\$ 3,333.33
Nassberg	166,666	\$ 1,666.66
Iammatteo	166,666	\$ 1,666.64
Snyder-Hixon Associates	333,333	\$25,000.00

12. Winneco was a shell, a holding company set up principally to operate and manage Palmer Plastics, Inc. Under the terms of an agreement, Winneco was to act as consultant to Palmer and had an option to purchase Palmer's stock if certain conditions were met on or before January 1, 1973. In connection with the Stock Purchase Agreement dated June 20, 1972, it was agreed that Palmer would retain Winneco as management consultants for the period from the date of the agreement to the closing date. In this connection, it was agreed that Winneco and its officers would have the power to manage and direct the daily operations of Palmer, including hiring and firing of employees, purchase and sale of materials and goods, etc., to be exercised reasonably in Winneco's judgment as to the best interest of the corporations.

13. None of Palmer's stock was ever purchased by or ever transferred to Winneco. Rather, the stock was endorsed in blank and held by Palmer in escrow pursuant to the contract to purchase.

14. Petitioner's responsibility was sales and shipment. He was on the road 40 percent to 50 percent of the time visiting accounts. Iammatteo's area of responsibility with Winneco and Palmer was manufacturing, purchasing and production. Snyder and Hixon shared the responsibility for the infusion of

capital into Winneco, which could be either loaned or advanced to Palmer. Snyder and Hixon were also responsible for Winneco's and Palmer's budgeting, accounting and forecasting.

15. Because of the failure of Snyder-Hixon Associates to come up with the requisite finances for Palmer, the contract that Winneco had to purchase Palmer expired on January 1, 1973. However, it was further extended for thirty days. The option which Winneco held to acquire an interest in Palmer was never exercised.

16. Neither Nassberg, Snyder nor Hixon owned any stock in Palmer. Likewise, none were officers nor directors of Palmer.

17. Petitioner was given and exercised check writing authority on Palmer's checking account(s). The authority was given by Wildstein and could have been revoked by him at will.

18. Petitioner testified that he signed Palmer's checks as a convenience for amounts less than \$1,000.00.

19. Copies of Palmer checks show that petitioner signed checks.

20. Petitioner testified that he did not have authority to decide what bills were to be paid by Palmer nor did he have authority to decide what checks were to be drawn. He also testified that he could not hire or fire employees. This is contrary to the powers granted in the Stock Purchase Agreement (see Finding of Fact No. 12).

21. Palmer's checkbook was kept in a safe and only Francis Cohen, its bookkeeper, had access to it.

22. Palmer eventually went into a Chapter 11 bankruptcy. Petitioner "left shortly thereafter".

CONCLUSIONS OF LAW

A. That subsection (g) of section 685 of the Tax Law provides in part:

"Any person required to collect, truthfully account for, and pay over the tax imposed by this article who willfully fails to collect such tax or truthfully account for and pay over such tax or willfully attempts in any manner to evade or defeat the tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty equal to the total amount of the tax evaded, or not collected, or not accounted for and paid over."

B. That subsection (n) of section 685 of the Tax Law provides, in part, that:

"...the term person includes an individual, corporation or partnership or an officer or employee of any corporation (including a dissolved corporation), or a member or employee of any partnership, who as such officer, employee or member is under a duty to perform the act in respect of which the violation occurs."

C. That for the period in issue, petitioner was actively engaged in the managerial and financial affairs of Palmer.

D. That for the period in issue, petitioner was a person required to collect, truthfully account for and pay over the income tax for said period.

Matter of Pasquale Iammatteo, State Tax Commission, July 31, 1981; Matter of Robert Snyder, State Tax Commission, July 31, 1981; Matter of Phillip Hixon, State Tax Commission, July 31, 1981.

E. That in view of the foregoing, the petition, herein, is denied and the Notice of Deficiency is sustained.


DATED: Albany, New York

JUN 18 1982

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER