

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Joseph Olewitz :

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 :
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 23rd day of April, 1982, he served the within notice of Decision by certified mail upon Joseph Olewitz, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Joseph Olewitz
One University Place
New York, NY 10003

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
23rd day of April, 1982.

Annex A. Haglund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
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Tax under Article 22 of the Tax Law for the Year :
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 23rd day of April, 1982, he served the within notice of Decision by certified mail upon Joseph Bartfield 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 Bartfield
Ballon, Stoll & Itzler
1180 Avenue of the Americas
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
23rd day of April, 1982.

Ernie A. Blagelund

J. Vredenburg

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

April 23, 1982

Joseph Olewitz
One University Place
New York, NY 10003

Dear Mr. Olewitz:

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 Bartfield
Ballon, Stoll & Itzler
1180 Avenue of the Americas
New York, NY 10036
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
JOSEPH OLEWITZ	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article	:	
22 of the Tax Law for the Year 1975.	:	

Petitioner, Joseph Olewitz, One University Place, New York, New York 10003, 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 1975 (File No. 21359).

On November 18, 1980, petitioner advised the State Tax Commission, in writing, that he desired to waive a small claims hearing and to submit the case to the State Tax Commission, based on the entire record contained in the file.

ISSUES

Whether petitioner is subject to a penalty pursuant to section 685(g) of the Tax Law as a person who willfully failed to collect, truthfully account for and pay over the New York State withholding taxes due from McMurray Slacks, Inc.

FINDINGS OF FACT

1. McMurray Slacks, Inc. (hereinafter McMurray), 350 5th Avenue, New York, New York 10001, failed to pay over the New York State personal income taxes withheld from the wages of its employees for the period March 16, 1975 to April 30, 1975.

2. On November 28, 1977 the Audit Division issued a Statement of Deficiency in conjunction with a Notice of Deficiency against petitioner, Joseph Olewitz,

wherein a penalty was asserted pursuant to section 685(g) of the Tax Law for \$185.90, such amount being equal to the New York State withholding taxes due from McMurray. Said penalty was asserted on the ground that petitioner was a person required to collect, truthfully account for and pay over the withholding taxes, and that he willfully failed to do so.

3. During the period at issue petitioner was a director and president of McMurray.

4. On April 18, 1975 McMurray made an assignment for the benefit of creditors to the New York Creditmen's Adjustment Bureau. Pursuant to said assignment, the assignee acquired all assets and assumed all liabilities of McMurray. Petitioner contended that the deficiency at issue will be paid by the assignee.

5. Pursuant to a letter submitted by the assignee:

"Currently, there is approximately \$44,838.51 in this estate. Priority tax claims total approximately \$4,000.00. Therefore, the liability to New York State in the amount of \$185.90 will be paid in full upon conclusion of this proceeding."

CONCLUSIONS OF LAW

A. That petitioner, Joseph Olewitz, has failed to sustain the burden of proof imposed by section 689(e) of the Tax Law to show withholding tax funds were transferred to the assignee. Further, he submitted no evidence to show that funds were actually set aside for withholding tax purposes.

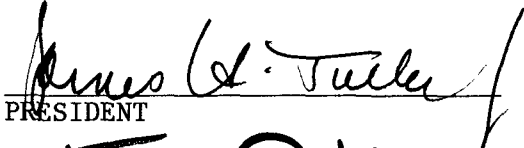
B. That petitioner, Joseph Olewitz, was director and president of McMurray Slacks, Inc. He was a responsible officer as defined within the meaning and intent of section 685(n) of the Tax Law and he was liable for the penalty imposed under section 685(g) of the Tax Law.

C. That the petition of Joseph Olewitz is denied and the Notice of Deficiency dated November 28, 1977 is sustained.

DATED: Albany, New York

APR 23 1982

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER