

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of		
Hyman Perlstein	:	
for Redetermination of a Deficiency or a Revision	:	AFFIDAVIT OF MAILING
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

Connie Hagelund, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 9th day of April, 1982, she served the within notice of Decision by certified mail upon Hyman Perlstein, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Hyman Perlstein
53 Salisbury Run
Mt. Sinai, NY 11766

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
9th day of April, 1982.

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

April 9, 1982

Hyman Perlstein
53 Salisbury Run
Mt. Sinai, NY 11766

Dear Mr. Perlstein:

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

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
HYMAN PERLSTEIN	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1973.	:	

Petitioner, Hyman Perlstein, 53 Salisbury Run, Mt. Sinai, New York 11766, filed a petition for redetermination of a deficiency for for refund of personal income tax under Article 22 of the Tax Law for the year 1973 (File No. 25953).

A formal hearing was held before Robert A. Couze, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on October 28, 1981 at 9:15 A.M. Petitioner appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq., (Angelo A. Scopellito, Esq., of counsel).

ISSUE

Whether petitioner was a person required to collect, truthfully account for and pay over withholding taxes on behalf of a corporate employer.

FINDINGS OF FACT

1. On October 30, 1978 the Audit Division issued a Statement of Deficiency and a Notice of Deficiency against petitioner in the sum of \$24,172.72 as withholding taxes due from "Emerald Green Corp., Div. of Datatron Processing, Inc." (sic) for the tax period January 1, 1973 to December 31, 1973.

2. The Audit Division asserted petitioner was a person required to collect, truthfully account for and pay over withholding taxes due from the

corporate employer, pursuant to the provisions of section 685, subsections (g) and (n) Tax Law.

3. The corporate employer was in the bulk mailing and letter processing business.

4. The petitioner was in charge of production. He also solicited business for the corporate employer.

5. As a matter of prestige, petitioner was given the title of vice president in order to impress the corporate employer's customers.

6. The petitioner did not have any managerial function over the operation of the corporate employer. However, he could hire and fire employees directly involved in the mailing process and although he could not determine their salary, he could recommend them for increases. He could neither hire nor fire employees involved in other processes.

7. Petitioner did not have any check writing authority, nor was he a member of the corporate employer's board of directors.

8. Petitioner testified that he may have purchased some stock in his corporate employer pursuant to a stock option; however, he could not recall how many shares he may have purchased.

9. The petitioner listed his occupation as "salesman" on his U.S. Individual Income Tax Return for 1973.

CONCLUSION OF LAW

A. That section 685(g) of the Tax Law provides that any person required to collect, truthfully account for, and pay over the personal income tax imposed by the Tax Law, 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 section 685(n) of the Tax Law defines the word "person", for the purpose of section 685(g), and reads as follows:

"For purpose of subsections (g)... 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 petitioner was not a person required to collect, truthfully account for, and pay over the personal income tax at issue herein.

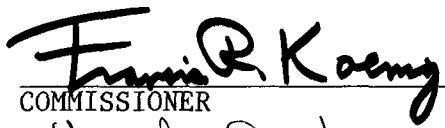
D. That the petition of Hyman Perlstein is granted and that the Notice of Deficiency is cancelled.

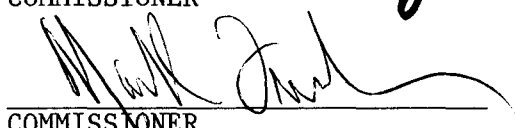
DATED: Albany, New York

APR 09 1982

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER