

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :

of

Harry Reingold :

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 Period :
1/16/77 - 6/15/77.

State of New York
County of Albany

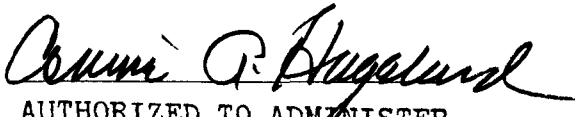
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 14th day of December, 1982, he served the within notice of Decision by certified mail upon Harry Reingold, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Harry Reingold
100 Central Park S.
New York, NY 10019

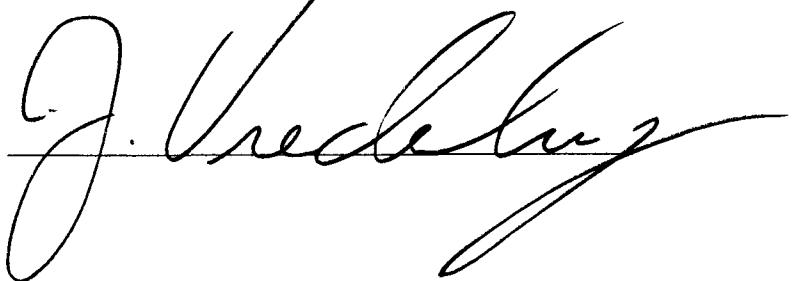
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

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
14th 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

Harry Reingold

:

:

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 Period:
1/16/77 - 6/15/77.

State of New York
County of Albany

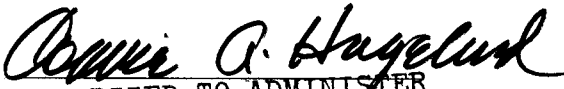
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 14th day of December, 1982, he served the within notice of Decision by certified mail upon Abraham Reingold the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

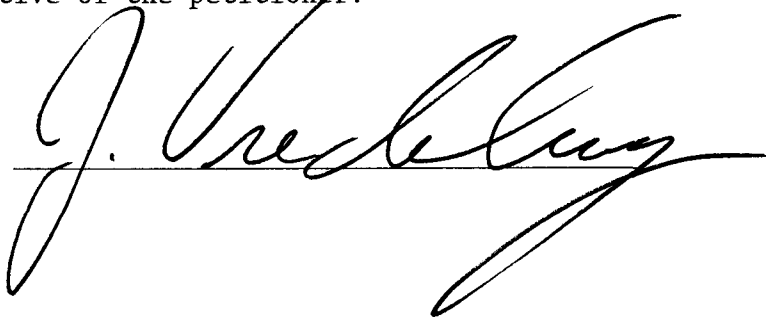
Abraham Reingold
Glabman, Rubenstein, Reingold & Rothbart
32 Court St.
Brooklyn, NY 11201

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
14th 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 14, 1982

Harry Reingold
100 Central Park S.
New York, NY 10019

Dear Mr. Reingold:

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
Abraham Reingold
Glabman, Rubenstein, Reingold & Rothbart
32 Court St.
Brooklyn, NY 11201
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
HARRY REINGOLD
for Redetermination of a Deficiency or for
Refund of Personal Income Tax under Article
22 of the Tax Law for the Year 1977.

:
:
:
DECISION
:
:
:

Petitioner, Harry Reingold, 100 Central Park South, 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 Year 1977. (File No. 23969).

A formal hearing was held before Arthur Bray, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on September 22, 1981 at 3:30 P.M. Petitioner appeared by Glabman, Rubenstein, Reingold & Rothbart (Abraham Reingold, Esq., of counsel). The Audit Division appeared by Ralph J. Vecchio, Esq. (Samuel Frend, Esq., of counsel).

ISSUE

Whether petitioner is liable for the penalty asserted against him pursuant to section 685(g) of the Tax Law with respect to New York State withholding taxes due from McGlone, Nightingale, Reingold & Spellman Advertising, Inc. for the period January 16, 1977 through June 15, 1977.

FINDINGS OF FACT

1. The firm of McGlone, Nightingale, Reingold & Spellman Advertising, Inc. ("McGlone") failed to pay New York State personal income tax withheld from the wages of its employees in the amount of \$3,165.79 for the period January 16, 1977 through June 15, 1977.

2. On July 31, 1978, the Audit Division issued a Notice of Deficiency and a Statement of Deficiency against petitioner asserting a penalty equal to the amount of unpaid withholding tax New York due from McGlone for the period January 16, 1977 through June 15, 1977.

3. In March, 1976 petitioner became a shareholder and vice-president of McGlone working as an accounts executive engaged in advertising. As an accounts executive, petitioner coordinated advertisements for clients and supervised those who performed the art work. Petitioner was not involved with McGlone's payroll account. Petitioner had been an accounts executive in advertising agencies for about twenty years prior to the time he became associated with McGlone.

4. In the beginning of January, 1977 petitioner contacted his attorney, Abraham Reingold, to advise him that he had just discovered financial irregularities within the corporation engaged in by Mr. Nightingale and, as a result, he wished to dissociate himself from McGlone. Petitioner's concern was caused by Mr. Nightingale's preferential treatment of creditors. Petitioner was also concerned by his discovery that McGlone was insolvent.

5. Mr. Nightingale was the executive vice-president and the financial officer of the corporation. In this capacity Mr. Nightingale took care of the books and records of the corporation including payroll. Mr. Nightingale also signed tax returns.

6. After petitioner spoke to his attorney, petitioner's attorney contacted Mr. Nightingale, Mr. Nightingale's attorney, and Mr. Nightingale's accountant to commence negotiations for the termination of petitioner's relationship with McGlone. Protracted negotiations were required because if petitioner had

suddenly terminated his relationship with McGlone he would have been subject to lawsuits.

7. In January, 1977 petitioner also requested his attorney to incorporate his business so that petitioner would be able to service his accounts which had been serviced under McGlone.

8. On January 14, 1977 it was determined that the name of M.N.R. Advertising Corp. ("M.N.R.") was available for petitioner's corporate use. On the same day a certificate of incorporation for M.N.R. was submitted to the Secretary of State in Albany for filing. Subsequently, petitioner received a filing receipt from the Department of State advising him that the certificate of incorporation for M.N.R. was filed on January 21, 1977.

9. Negotiations between petitioner and Mr. Nightingale over petitioner's withdrawal from McGlone continued while petitioner was in the process of setting up M.N.R. On February 28, 1977 a proposed agreement was set forth in a letter to petitioner and M.N.R. This letter stated, in part:

"This letter, when accepted by both of you, will confirm the agreement among you and McGlone Nightingale Reingold & Spellman Advertising, Inc. (the "Corporation"), a New York corporation, with respect to the termination of the relationship between the Corporation and Mr. Harry Reingold ("Reingold").

1. Effective February 28, 1977, Reingold will cease being a shareholder by selling and transferring his ten shares of the Corporation's Common Stock for \$100 paid by the Corporation simultaneously.

* * *

3. Reingold hereby resigns as an officer and director of the Corporation."

10. The foregoing agreement was signed by the parties on April 19, 1977. This agreement was the outcome of ongoing negotiations from the middle of January until the time the agreement was signed.

11. During the period February 28, 1977 until April 19, 1977 petitioner continued to perform services for his clients from the offices of McGlone. Petitioner, however, advised his clients that he was M.N.R. and billed his clients through M.N.R. M.N.R. would reimburse McGlone for expenses such as the services of an employee of McGlone or office space.

12. During the period that the agreement was being negotiated petitioner was aware that certain creditors were being preferred over other creditors. Sometime near the conclusion of the negotiations petitioner became aware that Mr. Nightingale was deferring the payment of withholding taxes.

13. Petitioner did not formally resign from McGlone until April 19, 1977. He was also receiving a salary from McGlone until the agreement was executed. Petitioner's stock was not tendered until the agreement was executed.

14. In April, 1977 petitioner moved his offices to a different location.

15. No evidence was presented as to whether petitioner had the right to hire and fire employees, had access to McGlone's books, or had the right to sign checks on behalf of the corporation. In addition, no evidence was presented as to whether petitioner continued to service the accounts of McGlone from February 28, 1977 until April 19, 1977.

CONCLUSIONS OF LAW

A. That in view of the facts that petitioner was a vice-president and shareholder of McGlone and that no evidence was presented as to: whether petitioner had the authority to hire and fire employees; whether petitioner had access to McGlone's books, or whether petitioner had the authority to write checks; petitioner has failed to sustain the burden of proof imposed by section 689(e) of the Tax Law to establish that he is not a person within the meaning of section 685(n) of the Tax Law and liable for the penalty asserted

pursuant to section 685(g) of the Tax Law for willfully failing to collect, truthfully account for, and pay over withholding tax due from McGlone for the period January 16, 1977 through April 19, 1977.

B. That since petitioner terminated his association with McGlone on April 19, 1977, petitioner was not a person within the meaning of section 685(n) of the Tax Law with respect to a violation of section 685(g) of the Tax Law for the period after April 19, 1977.

C. That petitioner is not liable for withholding tax due from McGlone after April 19, 1977 and the Audit Division is hereby directed to modify the Notice of Deficiency by eliminating therefrom the penalty attributable to tax withheld after April 19, 1977.

D. That the petition of Harry Reingold is granted to the extent indicated in Conclusion of Law "C" and in all other respects is denied.

DATED: Albany, New York

DEC 14 1982

STATE TAX COMMISSION

NOTING


PRESIDENT


COMMISSIONER


COMMISSIONER