

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of

Al Rosen

:

:

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 :
1974.

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 11th day of February, 1982, he served the within notice of Decision by certified mail upon Al Rosen, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Al Rosen
2360 Bergen Ave.
Brooklyn, NY 11234

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
11th day of February, 1982.

Carrie A. Haglund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
of
Al Rosen

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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 :
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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 11th day of February, 1982, he served the within notice of Decision by certified mail upon David Goldstein the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

David Goldstein
Goldstein & Leiberman, Esqs.
132 Nassau St.
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
11th day of February, 1982.

Annie A. Haglund

J. Vredenburg

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

February 11, 1982

Al Rosen
2360 Bergen Ave.
Brooklyn, NY 11234

Dear Mr. Rosen:

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
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
David Goldstein
Goldstein & Leiberman, Esqs.
132 Nassau St.
New York, NY 10038
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
AL ROSEN
for Redetermination of a Deficiency or for
Refund of Personal Income Tax under Article 22
of the Tax Law for the Year 1974.

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DECISION

Petitioner, Al Rosen, 2360 Bergen Avenue, Brooklyn, New York 11234, 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 1974 (File No. 24912).

On May 19, 1981, petitioner informed the State Tax Commission, in writing, that he desired to waive hearing and to submit the case to the State Tax Commission, based on the entire record contained in the file. After due consideration of the record, the Commission renders the following decision.

ISSUE

Whether petitioner is subject to a penalty under Section 685(g) of the Tax Law.

FINDINGS OF FACT

1. On January 12, 1976 the Audit Division issued a Notice and Demand For Unpaid Withholding Tax Due against Al Rosen Knit-Tex, Inc. (Knit-Tex) for the year 1974 as follows:

Tax Withheld	\$ 924.41
Penalty	293.09
Interest	113.06
Total Due	<u>\$1,330.56</u>

The file does not indicate that Knit-Tex responded to the aforementioned notice and demand or that the total amount due was paid.

2. The Audit Division determined, from information in its possession, that petitioner Al Rosen was president of Knit-Tex. On November 27, 1978 the Audit Division issued a Notice of Deficiency for \$924.41, along with an explanatory Statement of Deficiency, on which a penalty under section 685(g) of the Tax Law was imposed against petitioner Al Rosen, as a person who willfully failed to collect, truthfully account for and pay over personal income taxes withheld from the employees of Knit-Tex.

3. The sole evidence submitted by petitioner was an affidavit signed by him denying that he was subject to a penalty under section 685(g) of the Tax Law because he was not a "person" and he did not "willfully" fail to collect the withholding tax from the employees of the corporation for the year 1974. The record does not contain any evidence supporting petitioner's affidavit, or any information giving the reasons for his contentions.

CONCLUSIONS OF LAW

A. That petitioner Al Rosen has failed to sustain the burden of proof as required by section 689(e) of the Tax Law in establishing that he was not subject to a penalty under section 685(g) of the Tax Law.

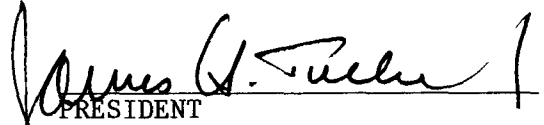
B. That petitioner Al Rosen, as president of Al Rosen Knit-Tex, Inc., is a person who willfully failed to collect, truthfully account for and pay over personal income taxes withheld from its employees and is subject to a penalty in accordance with the meaning and intent of section 685(g) of the Tax Law.

C. That the petition of Al Rosen is denied and the Notice of Deficiency issued November 27, 1978 is sustained, together with such interest as may be lawfully owing.

DATED: Albany, New York

FEB 11 1982

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER