

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
C. Richard Schine	:	
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	:	
1968.	:	

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 27th day of May, 1982, he served the within corrected pages of Decision by certified mail upon C. Richard Schine, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

C. Richard Schine
c/o Sperry, Weinberg, Wels, Waldman & Rubenstein
6 East 43rd Street
New York, NY 10017

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
27th day of May, 1982.

Annice R. Blaylock

J. Vredenburg

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
C. Richard Schine :

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 :
1968. :

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 27th day of May, 1982, he served the within corrected pages of Decision by certified mail upon Richard H. Wels, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Richard H. Wels
Sperry, Weinberg, Wels, Waldman & Rubenstein
6 East 43rd Street
New York, New York 10017

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
27th day of May, 1982.

Bernie A. Bagelund

J. Vredenburg

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

May 27, 1982

C. Richard Schine
c/o Sperry, Winberg, Wels, Waldman & Rubenstein
6 East 43rd Street
New York, NY 10017

Gentlemen:

Enclosed are corrected pages five (5) and eight (8) for the decision mailed to you on May 21, 1982.

Page five, paragraph 2, has been changed to read "1968" instead of "1978".

On page eight, a duplicate line in footnote number three (3) has been deleted.

Please insert these new pages into your copy of the decision.

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Richard H. Wels
Sperry, Weinberg, Wels, Waldman & Rubenstein
6 East 43rd Street
New York, NY 10017
Taxing Bureau's Representative

-5-

sufficient in amount were turned over to Unek to pay all outstanding taxes prior to February 9, 1968, but the officers and principals of Unek (Berne A. Watkins, Sondra Jacobson and Allan I. Jacobson) diverted such funds to other purposes.³

After the closing, no former officer of Ten Eyck had the authority to sign and issue Ten Eyck checks and, in fact, did not do so. All funds, accounts receivable, and inventory passed into the possession and control of Unek. A New York State corporation franchise tax return was filed by Ten Eyck for the fiscal year ended February 28, 1968, showing that the stock of this corporation was sold on February 5, 1968.

12. The same attorney represented both Dellwood and Unek. Allan I. Jacobson was the president of Unek and its principal shareholder. Sondra Jacobson was Ten Eyck's bookkeeper after the closing. Berne A. Watkins took over the actual operation of Ten Eyck as co-manager with Ernest Cohen. Allan I. Jacobson and Berne A. Watkins were on Ten Eyck's payroll after the closing. Allan I. Jacobson filed for a liquor license representing himself as the controlling person of Unek, the purchaser of Ten Eyck. Unek had no assets nor value of any kind, being merely a "dummy" corporation formed to consummate the sale transaction only after it was realized that a liquor license might not be issued in the name of Dellwood, which it should be noted, was a viable corporation with assets.

Allan I. Jacobson was not an officer of Ten Eyck, but was a co-signatory with Ernest Cohen, a manager, on the Ten Eyck payroll account.⁴ Mr. Jacobson had no authority to sign or draw checks upon any general account of Ten Eyck, since Sondra Jacobson and Berne A. Watkins handled the general finances of Ten Eyck. Berne A. Watkins utilized Unek, a dummy corporation, as a shell to operate Ten Eyck. Allan I. Jacobson entered into this transaction with Mr. Watkins,

FOOTNOTES

1. The underlined language appeared to be added to the February 9, 1968 agreement at some time after its original preparation, as evidenced by the following: the period after the word "Purchaser" in the penultimate line appears to be changed to a comma; the underlined language appears entered by a typewriter different from that on which the entire agreement had been typed; the underlined language appears squeezed into the text of the agreement as it is not in keeping with the uniform spacing of lines throughout the body of the agreement; and, the underlined language completely negates the meaning and intention of that which came before it in the same escrow clause. While these circumstances understandably raise doubts as to the authenticity and veracity of the underlined language and its impact upon the escrow clause, it is clear that the February 9, 1968 agreement was admitted into evidence without objection; that Allan I. Jacobson conceded the authenticity of his signature on that agreement; and, that at no time did said petitioner or his representative raise the slightest question as to the validity of that agreement. Surmise and speculation cannot be substituted for that which appears on the record in this proceeding and, in the absence of any credible evidence to the contrary, the agreement must stand in its entirety as the parties' expressed intention. In this regard, the statement of Allan I. Jacobson, that it was his "understanding" that there would be no transfer of interest in Ten Eyck until a liquor license had been approved must, without further evidence which would justify rescission or reformation (such as fraud and unilateral mistake or mutual mistake between the parties) or evidence which might support a charge of tampering with the February 9, 1968 agreement, be dismissed as merely a self-serving declaration of one person's subjective intention which cannot alter the terms of a final and complete, merged written instrument.
2. On February 9, 1968, when Unek's notes were executed and issued to Schine Theatres, the notes issued by Dellwood in the course of the February 5, 1968 transaction were returned to Dellwood's attorneys.
3. It must be noted that the February 9, 1968 transaction was a purchase by Unek of Ten Eyck's stock and, notwithstanding the assumption of liability and indemnification agreements between Unek and Schine Theatres, Unek (and, as here, its officers and principals) must be liable to third parties for the indebtedness of Ten Eyck. While the former officers of Ten Eyck (J. Myer Schine, C. Richard Schine and Eugene Tannen) did take steps to cause the payment of tax indebtedness prior to February 9, 1968 through the issuance and delivery of checks by Schine Theatres to Unek at the closing, such steps were insufficient in the absence of proper safeguards for such payment, such as a provision naming an independent and responsible person (e.g., an attorney) for the handling of such checks for payment to the taxing authority.
4. Cohen used a mechanical device bearing his and Mr. Jacobson's signatures to "sign" payroll checks which were issued weekly.