

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
Eugene Sherman	:	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 Years	:	
1970-1973.	:	

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 June, 1982, he served the within notice of Decision by certified mail upon Eugene Sherman, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Eugene Sherman
242 E. 19th St., Apt. 2E
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
11th day of June, 1982.

Connie A. Hagelund

J. Vredenburg

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

June 11, 1982

Eugene Sherman
242 E. 19th St., Apt. 2E
New York, NY 10003

Dear Mr. Sherman:

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
EUGENE SHERMAN
for Redetermination of a Deficiency or for
Refund of Personal Income Tax under Article 22
of the Tax Law for the Years 1970, 1971, 1972
and 1973.

:
:
:
DECISION
:
:
:

Petitioner, Eugene Sherman, Apt. 2E, 242 East 19th Street, 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 years 1970, 1971, 1972 and 1973 (File No. 11299).

A small claims hearing was held before William Valcarcel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on April 27, 1981 at 9:15 A.M. Petitioner Eugene Sherman appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (Samuel Freund, Esq., of counsel).

ISSUE

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

FINDINGS OF FACT

1. Brides Penthouse failed to remit to the Department of Taxation and Finance \$1,797.88 in personal income taxes withheld from its employees as follows:

<u>PERIOD</u>	<u>AMOUNT</u>
August 1, to August 15, 1970	68.58
September 1, to September 31, 1971	250.70

December 1, to December 31, 1972	304.70
July 1, to December 13, 1973	1,173.90

2. On August 26, 1974, the Audit Division issued a Notice of Deficiency for \$1,797.88, along with a Statement of Deficiency, on which a penalty pursuant to section 685(g) of the Tax Law was imposed against petitioner Eugene Sherman, as a person who willfully failed to collect or truthfully account for and pay over personal income taxes withheld from the employees of Brides Penthouse.

3. In 1964, Brides Penthouse was created, whereby petitioner owned 48 percent of its stock and petitioner's former wife, Josephine Sherman owned 1 percent. The other 51 percent was owned by the mother-in-law of Mr. John Van Drill, president and principal stockholder of a corporation known as Le Boeuf. Le Boeuf was engaged in the manufacture and sale of wedding gowns and accessories, and in the business of dry cleaning wedding gowns. Brides Penthouse was primarily involved with the retail sale of wedding gowns and accessories manufactured by Le Boeuf.

4. Under an arrangement between Le Boeuf and Brides Penthouse a set procedure was strictly followed, whereby Brides Penthouse was required to send to Le Boeuf all sales receipts, invoices, bills, payroll cards etc. which had been previously acknowledged and approved by petitioner. Le Boeuf's bookkeeper would then compute the payroll and payroll taxes, summarize the sales and receipts, make a statement of payments to creditors, and draw the appropriate checks. All checks, and the payment of bills therefrom, were made through a Le Boeuf checking account. Le Boeuf's bookkeeper, as well as Mr. Van Drill had the authority to sign these checks, whereas petitioner Eugene Sherman did not.

5. Petitioner Eugene Sherman operated the retail functions of Brides Penthouse, but did not control its bookkeeping and financial functions. Although petitioner approved all documents before they were forwarded to Le

Boeuf, he did not control the payment of bills or payroll taxes, and he did not normally sign the employer's return reporting the amount of personal income tax withheld. All the books and records of Brides Penthouse were maintained and stored at the premises of Le Boeuf in New Jersey.

6. Employer's withholding tax returns submitted were computer printed, "Brides Penthouse/Le Boeuf Co." with the New Jersey address of Le Boeuf, and signed by its comptroller. The last employer's tax returns filed for the months of July, August, September, October, November and December, 1973 were signed by petitioner on March 20, 1974 as "former president" and with the notation, "unable to confirm". Petitioner contended that he was instructed to sign the employers returns for the final months of the corporation in order to "wind up" its activities. Brides Penthouse ceased its operations on December 13, 1973.

CONCLUSIONS OF LAW

A. That petitioner Eugene Sherman was not a "person" as defined in section 685(n) of the Tax Law and is not subject to a penalty in accordance with the meaning and intent of section 685(g) of the Tax Law.

B. That the petition of Eugene Sherman is granted and the Notice of Deficiency issued August 26, 1974 is cancelled.

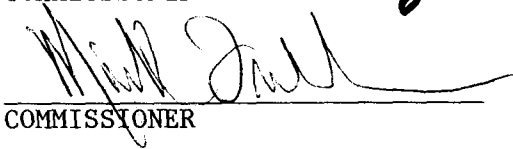
DATED: Albany, New York

JUN 11 1982

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER