

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of

N. Leslie Silvas

:

:

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 :
1969 & 1970.

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 26th day of March, 1982, he served the within notice of Decision by certified mail upon N. Leslie Silvas, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

N. Leslie Silvas
8 Stoney Wylde Ln.
Greenwich, CT 06830

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
26th day of March, 1982.

Carrie A. Haglund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
of

N. Leslie Silvas

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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 Years :
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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 26th day of March, 1982, he served the within notice of Decision by certified mail upon Martin Drazen the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Martin Drazen
McCarthy, Fingar, Donovan, Glatthaar, Drazen & Smith
175 Main St.
White Plains, NY 10601

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
26th day of March, 1982.

Carrie M. Hagelund

J. Vredenburg

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

March 26, 1982

N. Leslie Silvas
8 Stoney Wylde Ln.
Greenwich, CT 06830

Dear Mr. Silvas:

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
Martin Drazen
McCarthy, Fingar, Donovan, Glatthaar, Drazen & Smith
175 Main St.
White Plains, NY 10601
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
N. LESLIE SILVAS	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Years 1969 and 1970.	:	

Petitioner, N. Leslie Silvas, 8 Stoney Wylde Lane, Greenwich, Connecticut 06830 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 1969 and 1970 (File No. 21852).

A small claims hearing was held before Allen Caplowaith, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 5, 1981 at 2:45 P.M. Petitioner appeared with Martin Drazen, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Kevin Cahill, Esq., of counsel).

ISSUES

Whether petitioner is subject to a penalty pursuant to section 685(g) of the Tax Law as a person who willfully failed to collect, truthfully account for and pay over the New York State withholding taxes due from Heller & Silvas, Inc.

FINDINGS OF FACT

1. Heller & Silvas, Inc., 500 5th Avenue, New York, New York 10036 failed to pay over the New York State personal income taxes withheld from the wages of its employees for the periods as follows:

<u>WITHHOLDING TAX PERIOD</u>	<u>AMOUNT</u>
April 1, 1969 to December 31, 1969	\$2,392.43
January 1, 1970 to March 6, 1970	935.02
TOTAL	<u>\$3,327.45</u>

2. On February 27, 1978 the Audit Division issued a Statement of Deficiency in conjunction with a Notice of Deficiency against petitioner, N. Leslie Silvas, wherein a penalty was asserted pursuant to section 685(g) of the Tax Law for an amount equal to the New York State withholding taxes due from Heller & Silvas, Inc. Said penalty was asserted on the ground that petitioner was a person required to collect, truthfully account for and pay over the withholding taxes, and that he willfully failed to do so.

3. Prior to the periods at issue herein petitioner was an officer, director and stockholder of Heller & Silvas, Inc.

4. On April 8, 1969, Heller & Silvas, Inc. executed a general assignment for the benefit of creditors to Isidore E. Leinwand. Sometime prior to such execution the company ceased operations and liquidated all of its physical assets.

5. On or about July 14, 1969, an involuntary petition in bankruptcy was filed in the United States District Court for the Southern District of New York.

6. On April 2, 1969 petitioner formally resigned as an officer and director of Heller & Silvas, Inc. and from that point on he was no longer involved in the affairs of the corporation.

7. On October 1, 1969 petitioner commenced full time employment with Ross Roy N.Y., Inc. Such employment continued through the balance of the periods at issue.

8. Mr. Bernard Heller, former president of Heller & Silvas, Inc., appeared at the hearing as a witness for the Audit Division. Per Mr. Heller's testimony, petitioner was employed as the creative director whose duties were the creation of artwork and supervision of copy material, while his own duties as president consisted of handling the financial and bookkeeping matters of the company.

9. During 1969 petitioner received income of \$2,000.00 from Heller & Silvas, Inc. This amount represented compensation received for services rendered in January 1969. No income was derived by petitioner from Heller & Silvas, Inc. during 1970.

10. Petitioner contended that there were no employees of Heller & Silvas, Inc. during the periods at issue since the company was dissolved and operations had ceased.

11. Corporate records were unavailable, as they were previously disposed of by the trustee in bankruptcy.

12. The record contains no withholding tax returns of Heller & Silvas, Inc. for any of the periods at issue herein.

CONCLUSIONS OF LAW

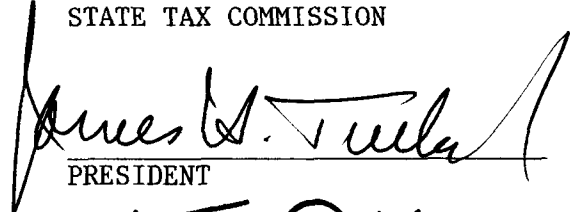
A. That petitioner, N. Leslie Silvas, was not a person required to collect, truthfully account for and pay over the personal income taxes withheld from the employees of Heller & Silvas, Inc. for the periods at issue herein. Accordingly, he is not liable for a penalty equal to the taxes withheld and not paid over to the State for such periods pursuant to sections 685(g) and 685(n) of the Tax Law.

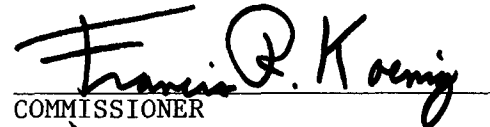
B. That the petition of N. Leslie Silvas is granted and the Notice of Deficiency dated February 27, 1978 is hereby cancelled.

DATED: Albany, New York

MAR 26 1982

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER