

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Irwin Silverberg :
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 :
1973. :
_____ :

AFFIDAVIT OF MAILING

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 3rd day of January, 1983, he served the within notice of Decision by certified mail upon Irwin Silverberg, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Irwin Silverberg
94 Westview Rd.
Spring Valley, NY 10977

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
3rd day of January, 1983.

Kathy Pfefferbach

J. Vredenburg

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Irwin Silverberg :

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 :
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 3rd day of January, 1983, he served the within notice of Decision by certified mail upon Meyer Schwartz the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Meyer Schwartz
20 Fleetwood Ave.
Spring Valley, NY 10977

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
3rd day of January, 1983.

Kathy Pappalardo

J. Vredenburg

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

January 3, 1983

Irwin Silverberg
94 Westview Rd.
Spring Valley, NY 10977

Dear Mr. Silverberg:

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
Meyer Schwartz
20 Fleetwood Ave.
Spring Valley, NY 10977
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
IRWIN SILVERBERG	:	DECISION
	:	
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1973.	:	

Petitioner, Irwin Silverberg, 94 Westview Road, Spring Valley, New York, 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 1973 (File No. 23376).

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 October 26, 1981 at 1:45 P.M. Petitioner appeared by Meyer Schwartz, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Kevin A. Cahill, Esq., of counsel).

ISSUES

- I. Whether the Notice of Deficiency was properly served on petitioner.
- II. Whether the Notice of Deficiency issued against petitioner, Irwin Silverberg, for 1973 is barred by the Statute of Limitations.

FINDINGS OF FACT

1. On August 29, 1975, the Audit Division issued a Notice and Demand for Unpaid Withholding Tax Due to Sanmarc Pharmaceuticals, Inc. ("Sanmarc") on the ground that New York State personal income tax on wages subject to withholding

was not paid in full for the calendar year 1973. The Notice asserted tax due of \$3,977.50, plus penalties of \$1,214.14 and interest of \$397.75, for a total balance due of \$5,589.39. The penalties were premised upon Sanmarc's failure to file returns when due and pay tax when due.

2. The amount of withholding tax due was determined by the Audit Division by examining the withholding tax statements of Sanmarc employees.

3. On March 27, 1978, the Audit Division issued a Notice of Deficiency to petitioner imposing a penalty against him equal to the amount of New York State withholding tax due and owing from Sanmarc. The penalty was issued on the ground that petitioner was a person required to collect, truthfully account for and pay over the tax at issue and that he willfully failed to do so.

4. The Notice of Deficiency was mailed to petitioner's home address by certified mail.

5. Sanmarc did not file a withholding tax return for the calendar year 1973.

CONCLUSIONS OF LAW

A. That petitioner was properly served with the Notice of Deficiency (Tax Law §681(a)).

B. That Tax Law §683(c)(1)(A) provides that an assessment of tax due under Article 22 of the Tax Law may be made at any time if no return is filed. Since Sanmarc did not file a withholding tax return, the Notice of Deficiency dated March 27, 1978 is not barred by the Statute of Limitations (Matter of Eugene Goldenburg, State Tax Comm., October 30, 1981).

C. That the petition of Irwin Silverberg is denied insofar as it relates to the service of the Notice of Deficiency and the Statute of Limitations, and

the matter is referred to the Tax Appeals Bureau for further proceedings not inconsistent herewith.

DATED: Albany, New York

JAN 3 1983

STATE TAX COMMISSION

Robert W. B. [Signature]
ACTING PRESIDENT

Francis R. Koenig
COMMISSIONER

[Signature]
COMMISSIONER