

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
Lawrence Silverman	:	
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 Years	:	
1975 & 1976.	:	

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 4th day of August, 1982, he served the within notice of Decision by certified mail upon Lawrence Silverman, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Lawrence Silverman
31 Greene St.
New York, NY 10013

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
4th day of August, 1982.




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

August 4, 1982

Lawrence Silverman
31 Greene St.
New York, NY 10013

Dear Mr. Silverman:

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
LAWRENCE SILVERMAN
for Redetermination of a Deficiency or for
Refund of Personal Income Tax under Article 22
of the Tax Law for the Years 1975 and 1976.

DECISION

Petitioner, Lawrence Silverman, 31 Greene Street, New York, New York 10013, 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 1975 and 1976 (File No. 24618).

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 September 21, 1981 at 9:15 A.M. Petitioner appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (Kevin Cahill, Esq., of counsel).

ISSUE

Whether the deficiency issued against petitioner as a responsible officer of Digital Lighting Corp. correctly reflects the current outstanding balance of withholding taxes due from said corporation for the periods at issue.

FINDINGS OF FACT

1. Digital Lighting Corp., 141 West 24th Street, New York, New York, 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>
May 1, 1975 through May 31, 1975	\$ 381.53
November 1, 1975 through December 31, 1975	785.35
February 1, 1976 through March 31, 1976	1,532.90
TOTAL	<u>\$2,699.78</u>

2. On September 25, 1978 the Audit Division issued a Statement of Deficiency in conjunction with a Notice of Deficiency against petitioner, Lawrence Silverman, 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 Digital Lighting Corp. 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. Petitioner was President of Digital Lighting Corp. during the periods at issue herein. As such, he readily conceded that he is responsible for any unpaid taxes of said corporation. However, he contended that all the withholding taxes for the periods at issue were previously paid.

4. Petitioner submitted copies of three New York State subpoenas issued against Digital Lighting Corp. with respect to withholding taxes for the year 1975. Each of said subpoenas contained handwritten notations by petitioner which he purported indicated payment of each corresponding deficiency. Although petitioner contended that such payments were made for periods at issue herein, information supplied by the Tax Compliance Bureau established that said payments were relative to deficiencies outstanding for periods other than those at issue.

5. Petitioner was unable to produce cancelled checks to support his contention that the entire deficiency was previously paid. He characterized what little information he did have as being "fairly sketchy".

6. Digital Lighting Corp. ceased doing business in January, 1978.

7. During the hearing, the Audit Division conceded total uncredited payments to the account of Digital Lighting Corp. for periods at issue herein of \$944.34. Information on the account of the Digital Lighting Corp. as of September 22, 1981 shows three payments totaling \$355.77 were made in October, 1976 for the period November 1, 1975 through November 30, 1975 and one payment of \$588.56 was made in June, 1977 for the period February 1, 1976 through March 31, 1976.

CONCLUSIONS OF LAW

A. That the penalty asserted against petitioner pursuant to section 685(g) of the Tax Law is to be reduced by the payments made to the account of Digital Lighting Corp. for the periods specified per Finding of Fact "7" supra.

B. That the petition of Lawrence Silverman is granted to the extent provided in Conclusion of Law "A" supra, and except as so granted, said petition is, in all other respects, denied.

C. That the Audit Division is hereby directed to modify the Notice of Deficiency dated September 25, 1978 to be consistent with the decision rendered herein.

DATED: Albany, New York

AUG 04 1982

STATE TAX COMMISSION

ACTING

PRESIDENT

COMMISSIONER

COMMISSIONER