

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
Judith Steloff

:

:

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 :
1975. :

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 18th day of June, 1982, he served the within notice of Decision by certified mail upon Judith Steloff, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Judith Steloff
254 East 68th Street
New York, NY 10021

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
18th day of June, 1982.

Carmie P. Haggard

J. Vredenburg

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Judith Steloff :

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 :
1975. :

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 18th day of June, 1982, he served the within notice of Decision by certified mail upon Sanford Goldstein the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Sanford Goldstein
Sanford Goldstein & Co.
60 E. 42nd St.
New York, NY 10165

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
18th day of June, 1982.

Guillermo J. Hagedorn

J. Vredenburg

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

June 18, 1982

Judith Steloff
254 East 68th Street
New York, NY 10021

Dear Ms. Steloff:

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
Sanford Goldstein
Sanford Goldstein & Co.
60 E. 42nd St.
New York, NY 10165
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
JUDITH STELOFF	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article	:	
22 of the Tax Law for the Year 1975.	:	

Petitioner, Judith Steloff, 254 East 68th Street, New York, New York 10021, 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 1975. (File No. 21365).

A formal hearing was held before Irving Atkins, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on June 16, 1981 at 10:45 A.M. Petitioner appeared by Sanford Goldstein, CPA. The Audit Division appeared by Ralph J. Vecchio, Esq. (Barry M. Bresler, Esq. and Anna Colello, Esq. of Counsel).

ISSUE

Whether petitioner is personally liable for a penalty equal to the total amount of the withholding tax reported due and owing from Ivan Tors Films, Inc., which said corporation did not remit.

FINDINGS OF FACT

1. Ivan Tors Films, Inc. ("the corporation") filed an "Employer's Return-Personal Income Tax Withheld" (IT-2101SA) for the semi-annual period, July 1, 1975 through December 31, 1975, reporting that the corporation had withheld income taxes collected in that period from its employees in the amount of \$3,339.70. Said report, signed by a representative of the corporation

February 2, 1976, was received in Albany without remittance. The report itself showed no remittance was included. The corporate address was shown as 445 Park Avenue, New York, New York 10022

2. On May 7, 1976, the Audit Division issued Notice and Demand for Payment of Withheld Tax Due (IT-2142.56) to Ivan Tors Films, Inc., 445 Park Avenue, New York, New York 10022 (Assessment No. W7605077421). Said Demand covered tax withheld of \$3,339.70. Imposition of penalty of \$217.09, plus interest of \$75.23 (accrued to date of assessment) increased the assessment to \$3,632.02.

3. On November 28, 1977, the Audit Division issued a Notice of Deficiency to Judith Steloff (who had been secretary of the corporation) holding her liable for a penalty equal to the total amount of withholding tax (\$3,339.70) which the corporation had accounted for in filing its semi-annual return to the State but had not paid over.

4. Accompanying the aforesaid Notice of Deficiency was a statement of a deficiency (AU7), bearing the same date which held petitioner liable for a penalty equal to the amount of withholding tax that the corporation had not turned over, i.e., \$3,339.70, for the period July 1, 1975 through December 31, 1975.

5. Petitioner stated in her petition that she had not been personally aware that withholding taxes were unpaid. She further stated that the corporation had moved to California and that no notice was ever received by the corporation that any such tax was owed. The petition concluded by stating that the corporation was willing to pay over the withholding tax and urged the cancellation of the penalty deficiency of November 28, 1977.

6. At the hearing, the representative for the petitioner stated "Judith Steloff acknowledges that she is liable for the tax...".

CONCLUSIONS OF LAW

A. That section 685(g) of the Tax Law provides:

"Any person required to collect, truthfully account for, and pay over the tax imposed by this article who willfully fails to collect such tax or truthfully account for and pay over such tax or willfully attempts in any manner to evade or defeat the tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty equal to the total amount of the tax evaded, or not collected, or not accounted for and paid over."

B. That section 685(n) of the Tax Law defines the term "person" to include, inter alia, an officer or employee of a corporation who "...is under a duty to perform the act in respect of which the violation occurs."

C. That passive delegation of an important duty by a corporate officer does not relieve him of his own responsibility. (Matter of Manuel Kopell, State Tax Commission, May 1, 1974.)

D. That petitioner, Judith Steloff, was a person required to collect, truthfully account for and pay New York State withholding tax due from Ivan Tors Films, Inc. within the meaning of subdivisions (n) and (g) of section 685 of the Tax Law. Accordingly, petitioner is subject to a penalty equal to said sum under subsection (g) of section 685 of the Tax Law.


E. That the petition of Judith Steloff is denied and the Notice of Deficiency issued on November 28, 1977 is sustained.

DATED: Albany, New York

JUN 18 1982

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER