

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
Ronald Talbot	:	
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 Year	:	
1975.	:	

State of New York
County of Albany

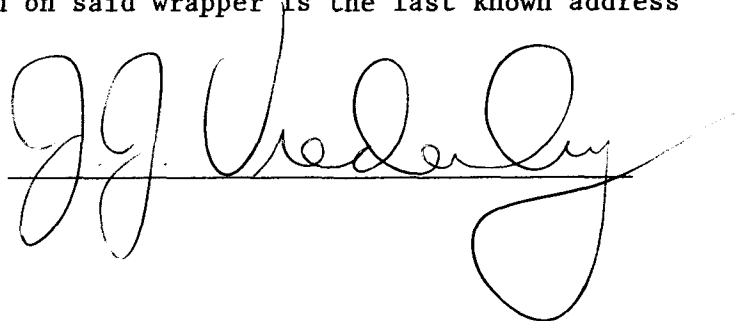
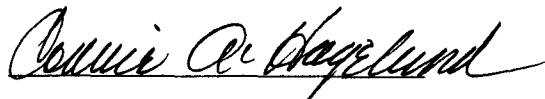
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 17th day of September, 1982, he served the within notice of Corrected Decision by certified mail upon Ronald Talbot, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Ronald Talbot
299 Fincham Ave.
Markham, Ontario, CANADA

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
17th day of September, 1982.



AUTHORIZED TO ADMINISTER
OATHS FOR CLAIM TO TAX LAW
SECTION 204

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
Ronald Talbot

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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 17th day of September, 1982, he served the within notice of Corrected Decision by certified mail upon Patrick J. Lane the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Patrick J. Lane
Stern, Lane & Stern
1650 Midtown Tower
Rochester, NY 14604

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
17th day of September, 1982.

Constance A. Haglund

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

J. Vredenburg

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

September 17, 1982

Ronald Talbot
299 Fincham Ave.
Markham, Ontario, CANADA

Dear Mr. Talbot:

Please take notice of the Corrected 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
Patrick J. Lane
Stern, Lane & Stern
1650 Midtown Tower
Rochester, NY 14604
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
RONALD TALBOT	:	CORRECTED 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, Ronald Talbot, 69 Knightsbridge Way, Markham, Ontario, Canada, filed petitions for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1975 (File Nos. 20740 and 22922).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, One Marine Midland Plaza, Rochester, New York, on July 18, 1980 at 9:15 A.M. Petitioner appeared by Patrick J. Lane, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Ellen Purcell, Esq., of counsel).

ISSUE

Whether petitioner was a person required to collect, truthfully account for and pay over withholding taxes due from Heinrich-Seibold Stationery Company, Inc. for the period January 1, 1975 to June 30, 1975 and July 16, 1975 to October 31, 1975, and from S & T Security Equipment, Inc. for the period January 1, 1975 to September 30, 1975 and who willfully failed to do so.

FINDINGS OF FACT

1. On February 28, 1977, the Audit Division issued a Statement of Deficiency against Ronald Talbot imposing a penalty equal to the amount of New York State withholding taxes due from S & T Security Equipment, Inc. for the period of

January 1, 1975 to September 30, 1975. This was done on the grounds that he was a person required to collect, truthfully account for and pay over said taxes and that he willfully failed to do so. Accordingly, on February 28, 1977 a Notice of Deficiency for \$8,884.83 was issued against petitioner.

2. On July 25, 1977, the Audit Division issued a Statement of Deficiency against Ronald Talbot imposing a penalty equal to the amount of New York State withholding taxes due from Heinrich-Seibold Stationery Company, Inc. for the period January 1, 1975 to June 30, 1975 and July 16, 1975 to October 31, 1975. This was done on the grounds that he was a person required to collect, truthfully account for and pay over said taxes and that he willfully failed to do so. Accordingly, on July 25, 1977, a Notice of Deficiency for \$3,379.85 was issued against petitioner.

3. S & T Security Equipment, Inc., 820 Emerson Street, Rochester, New York failed to pay over to the New York State Income Tax Bureau personal income taxes withheld from its employees' wages for the period January 1, 1975 to September 30, 1975 totaling \$8,884.83.

4. Heinrich-Seibold Stationery Company, Inc., 820 Emerson Street, Rochester, New York failed to pay over to the New York State Income Tax Bureau personal income taxes withheld from its employees' wages for the periods January 1, 1975 to June 30, 1975 and July 16, 1975 to October 31, 1975 totaling \$3,379.85.

5. Petitioner was secretary-treasurer, a director and a stockholder of S & T Security Equipment, Inc. and Heinrich-Seibold Stationery Company, Inc. He had authority to sign checks. He divided his time between the two companies which were at the same location. His responsibility in both firms was in accounting and various clerical functions.

6. Petitioner acknowledged that he was a "responsible person" of Heinrich-Seibold Stationery Company, Inc. from its inception on January 1, 1975 to July 3, 1975 at which time he resigned. He gave notice of his resignation to a creditor bank. He returned his stock in the corporation, which was worthless and for which he paid nothing, to the president of the company. He had owned 40 percent of the stock.

CONCLUSIONS OF LAW

A. That S & T Security Equipment Company, Inc. and Heinrich-Seibold Stationery Company, Inc. were employers required to deduct withholding taxes due from employees' wages for periods at issue within the meaning and intent of section 671 of the Tax Law.

B. That petitioner, Ronald Talbot, knew or should have known that S & T Security Equipment, Inc. failed to pay to the Income Tax Bureau the taxes withheld for the period January 1, 1975 to September 30, 1975, which taxes constitute trust funds pursuant to section 675 of the Tax Law.

C. That petitioner, Ronald Talbot, knew or should have known that Heinrich-Seibold Stationery Company, Inc. failed to pay to the Income Tax Bureau the taxes withheld for the period January 1, 1975 to June 30, 1975, which taxes constitute trust funds pursuant to section 675 of the Tax Law. Petitioner, Ronald Talbot, was not a "responsible person" of said corporation for the period July 16, 1975 to October 31, 1975, see Finding of Fact "6", supra. The Audit Division is directed to modify the Notice of Deficiency, dated July 25, 1977, accordingly.

D. That petitioner, Ronald Talbot, willfully failed to collect, truthfully account for and pay over the taxes withheld by S & T Security Equipment, Inc., during the period January 1, 1975 to September 30, 1975, and Heinrich-Seibold

Stationery Company, Inc., during the periods January 1, 1975 to June 10, 1975, within the meaning and intent of section 685(g) of the Tax Law [Levin v Gallman, 42 N.Y.2d 32, 396 N.Y.S.2d 623 (1977)].

E. That the petition of Ronald Talbot is granted to the extent indicated in Conclusion of Law "C", supra and in all other respects is denied and the Notice of Deficiency issued February 28, 1977 and the Notice of Deficiency issued July 25, 1977 as modified are sustained.

DATED: Albany, New York
SEP 17 1982

STATE TAX COMMISSION

ACTING PRESIDENT

COMMISSIONER

COMMISSIONER