

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition  
of  
Ronald Talbot

:

: 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 Period :  
10/1/74-12/31/74.

State of New York  
County of Albany

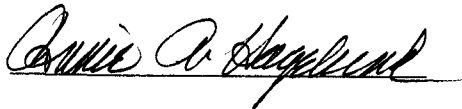
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 23rd day of April, 1982, he served the within notice of Decision by certified mail upon Ronald Talbot, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

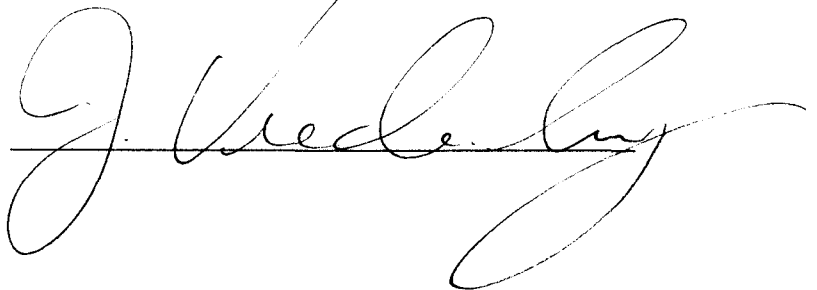
Ronald Talbot  
299 Fincham Ave.  
Markham, Ontario, CANADA

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  
23rd day of April, 1982.





STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of  
Ronald Talbot :

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 Period:  
10/1/74-12/31/74.

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 23rd day of April, 1982, he served the within notice of 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  
23rd day of April, 1982.

*Annie A. Chapman*

*J. Vredenburg*

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

April 23, 1982

Ronald Talbot  
299 Fincham Ave.  
Markham, Ontario, CANADA

Dear Mr. Talbot:

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  
Patrick J. Lane  
Stern, Lane & Stern  
1650 Midtown Tower  
Rochester, NY 14604  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
RONALD TALBOT : DECISION  
for Redetermination of a Deficiency or for :  
Refund of Personal Income Tax under Article 22 :  
of the Tax Law for the Period October 1, 1974 :  
through December 31, 1974. :  
:

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Petitioner, Ronald Talbot, 299 Fincham Avenue, 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 period October 1, 1974 through December 31, 1974 (File No. 25163).

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 20, 1981 at 3:10 P.M. Petitioner appeared by Patrick J. Lane, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Thomas Sacca, Esq., of counsel).

ISSUES

I. Whether petitioner was a person required to collect, truthfully account for and pay over personal income taxes withheld on behalf of S & T Security Equipment, Inc. for the period October 1, 1974 to December 31, 1974 and who willfully failed to do so.

II. Whether the Notice of Deficiency asserted against petitioner was issued within the statute of limitations for assessment.

FINDINGS OF FACT

1. On October 30, 1978, 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 the employees of S & T Security Equipment, Inc. for the period of October 1, 1974 through December 31, 1974. 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 October 30, 1978 a Notice of Deficiency for \$3,517.63 was issued against petitioner.

2. 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 October 1, 1974 through December 31, 1974 totaling \$3,517.63.

3. Petitioner was secretary-treasurer of S & T Security Equipment, Inc. As part of his duties he was to file on a semi-monthly basis the income tax withholding forms. No evidence was presented that these were filed during the period in issue. However, petitioner filed a Reconciliation of Personal Income Tax Withheld Form IT-2103 for S & T Security Equipment, Inc. for the year 1974. Claim is made that as the result of said return, the three-year statute of limitations had run and therefore the deficiency is untimely.

4. Petitioner offered no documentary or other substantial evidence that he was not a person required to collect, truthfully account for and pay over withholding taxes due on behalf of S & T Security Equipment, Inc.

#### CONCLUSIONS OF LAW

A. That S & T Security Equipment Company, Inc. was an employer 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 since withholding tax returns (Form IT-2101) were not filed by S & T Security Equipment, Inc. for the period in issue, the statute of limitations

for assessment had not expired for this period, in accordance with the meaning and intent of section 683(c)(1)(A) of the Tax Law. Reconciliation of personal income tax withheld is not considered a return that satisfies the requirements of section 683(a) of the Tax Law [see Matter of Gerald Auerbach and Nathan Zucker, State Tax Commission, July 7, 1980].

C. That petitioner, Robert Talbot, was a person required to collect, truthfully account for and pay over personal income taxes on behalf of S & T Security Equipment, Inc. during the periods at issue and willfully failed to do so 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)].

D. That the petition of Robert Talbot is denied and the the Notice of Deficiency issued October 30, 1978 is sustained.

DATED: Albany, New York

APR 23 1982

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER