

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of

Frank R. Verville

:

:

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 Years :
1973 & 1974.

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 26th day of March, 1982, he served the within notice of Decision by certified mail upon Frank R. Verville, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Frank R. Verville
11-14 Shore Rd.
Douglaston, NY

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
26th day of March, 1982.

Conne A. Hagelberg

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
of
Frank R. Verville

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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 Years :
1973 & 1974.

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 26th day of March, 1982, he served the within notice of Decision by certified mail upon Robert Fardella the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Robert Fardella
Fardella & Feldman
1609 Grand Ave.
Baldwin, NY 11510

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
26th day of March, 1982.

Annie A. Hagelund

J. Vredenburg

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

March 26, 1982

Frank R. Verville
11-14 Shore Rd.
Douglaston, NY

Dear Mr. Verville:

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
Robert Fardella
Fardella & Feldman
1609 Grand Ave.
Baldwin, NY 11510
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
FRANK VERVILLE	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article	:	
22 of the Tax Law for the Years 1973 & 1974.	:	

Petitioner, Frank Verville, 11-44 Shore Road, Douglaston, 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 years 1973 and 1974. (File No. 16206).

A formal hearing was held before Robert A. Couze, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on July 14, 1981 at 10:40 A.M. Petitioner appeared by Fardella & Feldman, Esqs., (Robert Fardella, Esq., of counsel). The Audit Division appeared by Ralph J. Vecchio, Esq., (Angelo A. Scopellito, Esq., of counsel).

ISSUE

Whether petitioner Frank Verville was a person required to collect, truthfully account for and pay over withholding taxes due from Northerlin Co., Inc.

FINDINGS OF FACT

1. On May 24, 1976, the Audit Division issued a Notice of Deficiency against petitioner in the amount of \$44,833.37 for the tax period May 1, 1973 through September 15, 1974. The Notice of Deficiency, in effect, asserted petitioner was a person required to collect, truthfully account for and pay over withholding taxes due from the Northerlin Co., Inc. ("Northerlin") for the

tax period May 1, 1973 through September 15, 1974 pursuant to the provisions of subsections (g) and (n) of Section 685 New York Tax Law.

2. The asserted liability for the several withholding periods is as follows:

"May 1 - December 31, 1973	\$27,326.14
January 1, - March 31, 1974	6,145.97
June 16 - June 30, 1974	5,967.08
September 1 - September 15, 1974	5,394.18
	<u>\$44,833.37"</u>

3. Northerlin was in the waterproofing business, with 28 offices throughout the United States.

4. Petitioner was employed by Northerlin in or about early 1969 as its advertising manager. His duties consisted of coordinating Northerlin's advertising. In carrying out his duties, petitioner spent approximately 2 days per week in the New York office and the rest of the time was spent outside of New York. As advertising manager, petitioner did not have any managerial responsibilities at all; he could not hire nor fire employees, nor did he have any check signing powers, nor did he sign any tax returns.

5. In or about early September, 1973, Northerlin became associated with Graham Stuart Corp. From early September, 1973 to January 4, 1974, one Edward M. Gilbert and one Joseph Fleck managed Northerlin's fiscal and operational affairs.

6. From January 4, 1974 to the middle of April, 1974, the aforesaid Joseph Fleck was exclusively in charge of Northerlin's fiscal and operational affairs.

7. Notwithstanding the fact that he had learned as early as January, 1974 that Northerlin was not paying over its withholding taxes, petitioner, in April

or May 1974, assumed responsibility for Northerlin's day-to-day operations. He did not have any fiscal responsibility.

8. Subsequent to Mr. Fleck's departure, Graham Stuart Corp. assumed exclusive responsibility for Northerlin's fiscal affairs.

9. Petitioner was not a shareholder of Northerlin, nor of Graham Stuart Corp.

CONCLUSIONS OF LAW

A. That section 685(g) of the Tax Law provides that any person required to collect, truthfully account for, and pay over personal income tax, 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 word "person", for the purpose of section 685(g), and reads as follows:

"For purposes of subsections (g) ...the term person includes an individual, corporation or partnership or an officer or employee of any corporation (including a dissolved corporation), or a member or employee of any partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs."

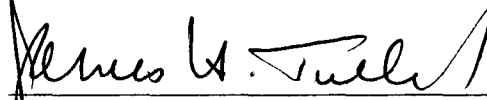
C. That petitioner was not a person required to collect, truthfully account for, and pay over the personal income tax in issue herein.

D. That the petition, herein, is granted and that the Notice of Deficiency, herein, is cancelled.

DATED: Albany, New York

MAR 26 1982

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER