

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
P. Frank Yee :
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 :
1974. :

State of New York
County of Albany

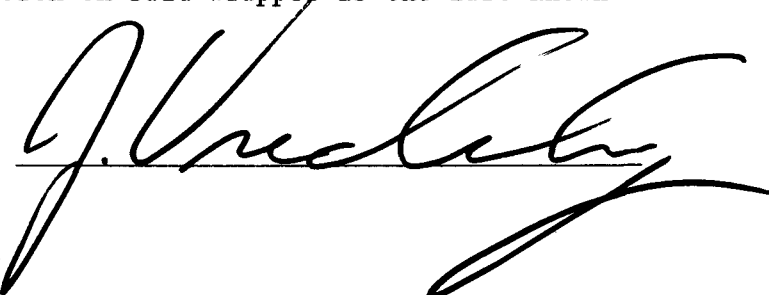
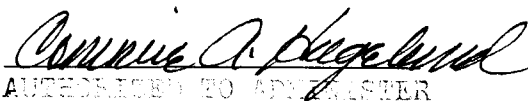
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 6th day of October, 1982, he served the within notice of Decision by certified mail upon P. Frank Yee, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

P. Frank Yee
267 62nd St. #2F
Brooklyn, NY 11220

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
6th day of October, 1982.



AUTHORISED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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

October 6, 1982

P. Frank Yee
267 62nd St. #2F
Brooklyn, NY 11220

Dear Mr. Yee:

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 TAX COMMISSION

In the Matter of the Petition :
of :
P. FRANK YEE : DECISION
for Redetermination of a Deficiency or for :
Refund of Personal Income Tax under Article 22 :
of the Tax Law for the Year 1974. :

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 28, 1981 at 9:15 A.M. Petitioner P. Frank Yee appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (Anna D. Colello, Esq., of counsel).

Whether petitioner was a person required to collect, truthfully account for and pay over New York State withholding taxes of Dayton Togs, Inc. for 1974.

1. On March 26, 1979, the Audit Division issued both a Statement of Deficiency and a Notice of Deficiency against petitioner, P. Frank Yee, imposing penalties equal to the amount of New York State withholding taxes due from Dayton Togs, Inc. for 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. Said Notice of Deficiency was issued to him for \$2,744.44.

2. The Audit Division ascertained that the petitioner was a responsible corporate officer since its records indicated that he was listed as president on the New York State Corporate Tax return of Dayton Togs, Inc. for the period ending September 30, 1974. However, the Audit Division did not reveal any information in its possession on how it arrived at the amount of withholding tax, used as a basis for the issuance of the Notice of Deficiency.

3. Petitioner held the title of president in name only. He did sign the New York State Corporate Tax Return of Dayton Togs, Inc. for period ending September 30, 1974. Petitioner did not perform any managerial or fiscal functions on behalf of Dayton Togs, Inc.

4. Petitioner worked as floor manager of Dayton Togs, Inc., a ladies dress manufacturing business. As floor manager, petitioner supervised all employees doing the sewing as well as picking up the piecework done by the employees. The petitioner could hire employees who were members of the International Ladies' Garment Workers' Union as requested by the owner of Dayton Togs, Inc., Solomon Kamhi. However, as a union member he could not fire employees. The petitioner had no control of the office employees or the books and records of Dayton Togs, Inc.

5. The petitioner can neither read nor write English but is able to write his name.

6. As the president of Dayton Togs, Inc., petitioner retained his responsibility as floor manager. He had no authority to designate which creditors received payment. The payment of creditors was dictated by Solomon Kamhi

through the bookkeeper. Petitioner would occasionally sign company documents and checks as ordered by the owner of Dayton, Togs, Inc., Solomon Kamhi.

7. Petitioner did not hold any stock in the corporation.

8. Petitioner had no personal knowledge that the 1974 withholding tax was not being paid. Petitioner had no responsibility with respect to preparing withholding tax statements for Dayton Togs, Inc..

9. On June 25, 1975 Solomon Kamhi made the following written statement.

I Solomon Kamhi of Dayton Togs, Inc. at the address of 138 Mulberry Street, New York City was sole owner of the corporation. I am relieving Frank Yee of all obligations of the corporation. His only connection with the corporation was as floor manager, taking care of the operations and all employees, was a officer in name only no connection with corporation. (sic)

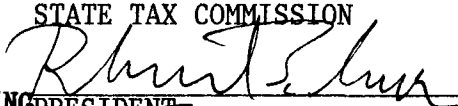

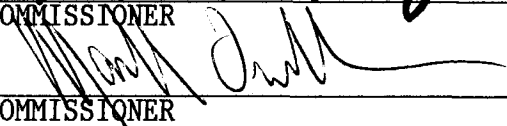
CONCLUSIONS OF LAW

A. That petitioner, P. Frank Yee, although an officer of Dayton Togs, Inc., was not a person required to collect, account for and pay over New York State withholding taxes. Accordingly, he is not liable for a penalty under section 685(g) of the Tax Law. (Petition of Richard Prince, State Tax Commission, November 27, 1981.

B. That the petition of P. Frank Yee is granted and the Notice of Deficiency issued March 26, 1979 is cancelled.

DATED: Albany, New York

OCT 06 1982

STATE TAX COMMISSION

ACTING PRESIDENT

COMMISSIONER

COMMISSIONER