

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of

Ben Lewis

:

:

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 :
1972 & 1973.

State of New York
County of Albany

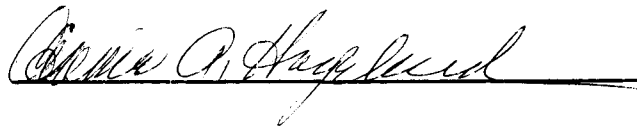
Connie Hagelund, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 24th day of June, 1983, she served the within notice of Decision by certified mail upon Ben Lewis, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Ben Lewis
1000 N.E. 12th Ave., Apt. 507
Hallandale, FL 33009

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
24th day of June, 1983.





AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Ben Lewis :

AFFIDAVIT OF MAILING

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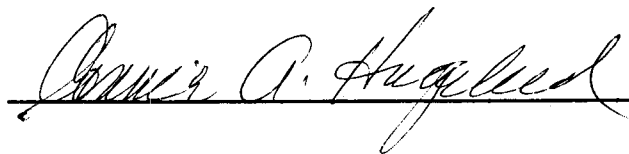
Connie Hagelund, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 24th day of June, 1983, she served the within notice of Decision by certified mail upon H. Stuart Kloppe the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

H. Stuart Kloppe
108-18 Queens Blvd.
Forest Hills, NY 11375

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
24th day of June, 1983.





AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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

June 24, 1983

Ben Lewis
1000 N.E. 12th Ave., Apt. 507
Hallandale, FL 33009

Dear Mr. Lewis:

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 Law 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
Building #9 State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
H. Stuart Kloppe
108-18 Queens Blvd.
Forest Hills, NY 11375
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
BEN LEWIS
for Redetermination of a Deficiency or for
Refund of Personal Income Tax under Article 22
of the Tax Law for the Years 1972 and 1973.

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DECISION

Petitioner, Ben Lewis, 1000 N.E. 12th Avenue, Apt. 507, Hallandale, Florida 33009, 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 1972 and 1973 (File No. 28618).

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 April 21, 1982 at 2:50 P.M. Petitioner appeared by H. Stuart Kloppe, Esq. The Audit Division appeared by Paul B. Coburn, Esq. (Thomas Sacca, Esq., of counsel).

ISSUE

Whether petitioner, Ben Lewis, was a person required to collect, truthfully account for and pay over withholding taxes due from Show Services, Inc.

FINDINGS OF FACT

1. On December 23, 1974, the Audit Division issued a Statement of Deficiency against petitioner, Ben Lewis, in the amount of \$42,243.65 for the years 1972 and 1973. The Statement of Deficiency asserted that petitioner was a person required to collect, truthfully account for and pay over withholding taxes due

from Show Services, Inc. ("Show Services") pursuant to the provisions of subsections (g) and (n) of section 685 of the New York Tax Law.

2. The asserted liability was for the following withholding periods:

<u>"WITHHOLDING TAX PERIOD"</u>	<u>AMOUNT</u>
April 1 to June 30, 1972	\$ 7,433.84
August 1 to September 1, 1972	11,050.98
October 1 to December 31, 1972	8,759.24
January 1 to March 31, 1973	10,464.09
April 1 to May 25, 1973	<u>4,535.50</u>
Total Due	\$42,243.65"

3. Show Services was in the business of operating exhibitions and shows at places like the New York Coliseum, Madison Square Garden, hotels, etc.

4. Petitioner's title with Show Services was that of "vice-president". The title was for his prestige rather than for his administrative responsibilities which were virtually non-existent.

5. At all times herein, one Howard E. George was Show Services' president. As president, Mr. George exclusively performed all of Show Services' managerial duties; petitioner's duties were those of salesman.

6. Petitioner testified that he owned 20 percent of the corporate stock.

7. Petitioner did not have any managerial function over the general business operation of Show Services, except that he had limited check writing authority to sign a check up to \$500.00 providing Mr. George was not available to sign same, or in any amount providing the check was co-signed and again providing Mr. George was not available.

8. At all times herein, petitioner may or may not have signed papers for Show Services and if he did he was completely unaware of their nature and quality. Furthermore, if he in fact signed any papers it was as a matter of convenience, because Mr. George was not present.

9. Petitioner could neither hire nor fire employees, nor could he give them increases in salary.

10. Petitioner never paid any of Show Services' bills, nor did he have authority to pay any of them.

11. Petitioner never participated in any meetings where it was determined which of Show Services' bills would or would not be paid.

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."

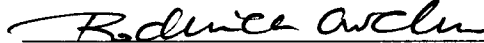
C. That petitioner was not a person required to collect, truthfully account for and pay over the personal income taxes withheld by Show Services, Inc. within the meaning and intent of subdivisions (g) and (n) of section 685 of the Tax Law.

D. That the petition of Ben Lewis is granted and the Notice of Deficiency herein is cancelled.


DATED: Albany, New York

STATE TAX COMMISSION

JUN 24 1983


PRESIDENT


COMMISSIONER


COMMISSIONER