

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
Alfred & Anne Ross	:	
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	:	
1974.	:	

State of New York
County of Albany

David Parchuck, 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 4th day of February, 1983, he served the within notice of Decision by certified mail upon Alfred & Anne Ross, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Alfred & Anne Ross
115 E. 9th St.
New York, NY 10003

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
4th day of February, 1983.

David Parchuck

Annie A. Haglund

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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

February 4, 1983

Alfred & Anne Ross
115 E. 9th St.
New York, NY 10003

Dear Mr. & Mrs. Ross:

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 OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
ALFRED ROSS and ANNE ROSS
for Redetermination of a Deficiency or for
Refund of Personal Income Tax under Article 22
of the Tax Law for the Year 1974.

:
:
:
:
:
:
:
:
:
:

DECISION

Petitioners, Alfred Ross and Anne Ross, 115 East 9th Street, New York, New York 10003, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1974 (File No. 21851).

A formal hearing was held before Arthur Bray, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on April 30, 1982 at 11:15 A.M. Petitioners appeared pro se. The Audit Division appeared by Paul B. Coburn, Esq. (Irwin Levy, Esq., of counsel).

ISSUE

Whether petitioners are liable for the penalty asserted against them pursuant to section 685(g) of the Tax Law with respect to New York State withholding taxes due from The Spa Lounge, Inc. and, if so, whether the liability was discharged in bankruptcy.

FINDINGS OF FACT

1. The Spa Lounge, Inc. ("Spa Lounge") failed to pay New York State personal income tax withheld from the wages of its employees in the amount of \$3,312.60 for the year 1974.

2. On April 10, 1978 the Audit Division issued to each petitioner a Notice of Deficiency accompanied by an explanatory Statement of Deficiency

which asserted a penalty equal to the amount of unpaid withholding tax due from the Spa Lounge for the year 1974.

3. In 1972 Alfred Ross built a hotel known as the Mount Kisko Health Spa in Mount Kisko, New York. In 1973 petitioners built a restaurant known as the Spa Lounge as an addition to the Mount Kisko Health Spa.

4. The Mount Kisko Health Spa and the adjacent Spa Lounge did not have as many customers as petitioners anticipated it would obtain and as a result petitioners began having financial difficulties. In 1975 the bank which held the mortgage on the property began foreclosure proceedings. Thereafter, petitioners unsuccessfully sought to reorganize their debt in bankruptcy proceedings. In 1978 petitioners were released from dischargeable debts in bankruptcy.

5. During the period in issue, Alfred Ross and Anne Ross were, respectively, the president and vice-president of the Spa Lounge.

6. The ownership of the Spa Lounge was represented by two shares of stock. Alfred Ross owned one share of stock and Anne Ross owned the other share of stock.

7. Alfred Ross and Anne Ross were active in operating the Spa Lounge. Each petitioner had access to the books and records of the Spa Lounge and were aware that withholding taxes were due and not paid over to the State of New York. In addition, each petitioner had authority to sign checks on behalf of the Spa Lounge and supervised the employees of the Spa Lounge.

CONCLUSIONS OF LAW

A. That Alfred Ross and Anne Ross were each a "person" within the meaning of section 685(n) of the Tax Law required, by section 685(g) of the Tax Law, to

collect, truthfully account for and pay over withholding taxes due from the Spa Lounge.

B. That the obligation imposed by section 685(g) of the Tax Law to collect, truthfully account for and pay over withholding taxes due is not dischargeable in bankruptcy (United States v. Sotelo et al., 436 U.S. 268, rehearing denied, 438 U.S. 907).

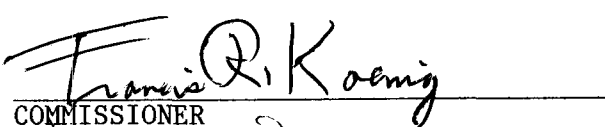
C. That the petitions of Alfred Ross and Anne Ross are hereby denied and the notices of deficiency issued April 10, 1978 are hereby sustained.

DATED: Albany, New York

STATE TAX COMMISSION

FEB 04 1983


ACTING PRESIDENT


COMMISSIONER


COMMISSIONER