

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
Nat Ross

:

: 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 1977. :

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 15th day of July, 1983, she served the within notice of Decision by certified mail upon Nat Ross, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Nat Ross
3800 Hillcrest Dr. Apt. 2
Hollywood, FL 33021

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
15th day of July, 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
Nat Ross :

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 1977. :

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 15th day of July, 1983, she served the within notice of Decision by certified mail upon H. Sheldon Kaufman 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. Sheldon Kaufman
Irving Kaufman & Co.
1440 Broadway
New York, NY 10018

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
15th day of July, 1983.





AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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

July 15, 1983

Nat Ross
3800 Hillcrest Dr. Apt. 2
Hollywood, FL 33021

Dear Mr. 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 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. Sheldon Kaufman
Irving Kaufman & Co.
1440 Broadway
New York, NY 10018
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
NAT ROSS	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1977.	:	

Petitioner, Nat Ross, 3800 Hillcrest Drive, Apt. 2, Hollywood, Florida 33021, 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 1977 (File No. 23344).

A small claims hearing was held before Allen Caplowaith, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on November 17, 1982 at 9:15 A.M. with all briefs to be submitted by December 17, 1982. Petitioner appeared by H. Sheldon Kaufman, CPA. The Audit Division appeared by Paul B. Coburn, Esq. (Michael Gitter, Esq., of counsel).

ISSUE

Whether petitioner, Nat Ross, is subject to a penalty as a person who willfully failed to collect, truthfully account for and pay over the New York State withholding taxes due from Hickory Fashions, Inc.

FINDINGS OF FACT

1. Hickory Fashions, Inc., 462 7th Avenue, New York, New York 10018, failed to pay over the New York State personal income taxes withheld from the wages of its employees for the period March 16, 1977 through April 21, 1977.

2. On June 26, 1978, the Audit Division issued a Statement of Deficiency in conjunction with a Notice of Deficiency against petitioner, Nat Ross,

wherein a penalty was asserted pursuant to section 685(g) of the Tax Law for an amount equal to the New York State withholding taxes due from Hickory Fashions, Inc. of \$1,682.00 for the period March 16, 1977 through April 21, 1977. Said penalty was asserted on the ground that petitioner was a person required to collect, truthfully account for and pay over the New York State withholding taxes of Hickory Fashions, Inc., and that he willfully failed to do so.

3. Petitioner conceded that he was a person responsible for the collection and payment of the withholding taxes at issue and liable for the penalty asserted by the Audit Division, however, he contended that Hickory Fashions, Inc. is bankrupt and the trustee, the New York Credit Men's Adjustment Bureau, has indicated that it is in possession of sufficient funds to pay the taxes at issue herein.

4. In a letter dated January 21, 1980, Hahn, Hessen, Margolis & Ryan, representatives of said trustee in bankruptcy, advised that:

"The trustee presently has on hand approximately \$125,362.19 to the credit of this estate. Further be advised that all priority tax claims which have been timely filed and which are allowed will be paid in full including the withholding tax claim of the State of New York."

5. In a more recent letter dated December 2, 1982, Hahn & Hessen advised that:

"As of November 10, 1982, the Trustee reported the sum of \$208,049.13 as the balance on hand to the credit of the estate. Priority claims total less than \$5,000. Therefore, these claims will be paid in full.

The trustee's final report is presently being prepared. We anticipate filing the report and closing the estate within the next thirty to sixty days."

6. Notification has not been received that the withholding taxes at issue were subsequently paid by the estate of the bankrupt.

CONCLUSIONS OF LAW


A. That inasmuch as petitioner, Nat Ross, conceded that he willfully failed to collect, truthfully account for and pay over the New York State personal income taxes withheld from the employees of Hickory Fashions, Inc. for the period at issue herein, the penalty asserted pursuant to section 685(g) of the Tax Law is sustained. The fact that the trustee in bankruptcy may be holding sufficient funds to cover payment of withholding taxes due from Hickory Fashions, Inc. for the period in issue does not bar the Audit Division from asserting a penalty against petitioner under section 685(g).

B. That the petition of Nat Ross is denied and the Notice of Deficiency dated June 26, 1978 is hereby sustained.


DATED: Albany, New York

STATE TAX COMMISSION

JUL 15 1983


PRESIDENT


COMMISSIONER


COMMISSIONER