

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Support Systems Associates, Inc. :
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 :
1977 & 1978. :
:

AFFIDAVIT OF MAILING

State of New York
County of Albany

Connie Hagelund, being duly sworn, deposes and says that she is an employee of the State Tax Commission, over 18 years of age, and that on the 10th day of November, 1983, she served the within notice of Decision by certified mail upon Support Systems Associates, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Support Systems Associates, Inc.
6 Bayview Ave.
Northport, NY 11768

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
10th day of November, 1983.

Maucha L. Grunelle

Connie A. Hagelund

STATE OF NEW YORK

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Support Systems Associates, Inc. :
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AFFIDAVIT OF MAILING

State of New York
County of Albany

Connie Hagelund, being duly sworn, deposes and says that she is an employee of the State Tax Commission, over 18 years of age, and that on the 10th day of November, 1983, she served the within notice of Decision by certified mail upon Robert J. Wainer 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 J. Wainer
100 Crossways Park West
Woodbury, NY 11797

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
10th day of November, 1983.

Maucha L. Sennelle

Connie G. Hagelund

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

November 10, 1983

Support Systems Associates, Inc.
6 Bayview Ave.
Northport, NY 11768

Gentlemen:

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
Robert J. Wainer
100 Crossways Park West
Woodbury, NY 11797
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
SUPPORT SYSTEMS ASSOCIATES, INC.	:	DECISION
	:	
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Years 1977 and 1978.	:	

Petitioner, Support Systems Associates, Inc., 6 Bayview Avenue, Northport, New York 11768, 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 1977 and 1978 (File No. 41132).

A formal hearing was held before Frank W. Barrie, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 24, 1983 at 1:20 P.M. Petitioner appeared by Robert J. Wainer, Esq. and Leonard H. Salis, Esq. The Audit Division appeared by John P. Dugan, Esq. (Alexander Weiss, Esq., of counsel).

ISSUES

I. Whether petitioner's late payment of withholding taxes was pursuant to an agreement with the Audit Division that penalties would be waived and interest reduced in consideration of such payment.

II. Whether petitioner's failure to timely (i) file withholding tax returns and (ii) pay withholding taxes was due to reasonable cause and not due to willful neglect.

FINDINGS OF FACT

1. On February 6, 1979, the Audit Division issued a Notice of Unbalanced Account against petitioner, Support Systems Associates, Inc., showing unpaid withholding tax for the 1977 tax year of \$34,810.62.

2. On December 18, 1979, the Audit Division issued a Notice of Unbalanced Account against petitioner showing unpaid withhholding tax for the 1978 tax year of \$59,139.35.

3. On January 3, 1980, the Audit Division issued a Notice and Demand for Unpaid Withholding Tax Due against petitioner for calendar year 1977 showing tax withheld and not paid over of \$34,810.62 plus penalty of \$13,092.23 and interest.

4. On February 28, 1980, the Audit Division issued a Notice and Demand for Unpaid Withholding Tax Due against petitioner for calendar year 1978 showing tax withheld and not paid over of \$59,139.35 plus penalty of \$19,232.49 and interest.

5. Robert J. Wainer, petitioner's counsel during the years at issue, testified that petitioner's failure to timely pay withholding taxes was the result of an incompetent bookkeeping department which was responsible for the mailing of tax returns and the payment of withholding taxes. "(W)e had very, very severe problems with these people (bookkeeping department of approximately five people). In fact, it came to the point where they almost blackmailed the president, and we fired them in mass."

6. According to Mr. Wainer, petitioner became aware that the withholding taxes for 1977 and 1978 were not paid in the early part of 1979¹. Shortly

¹ It appears that petitioner's efforts to pay over to the state the income taxes for 1977 which it had withheld from its employees' wages were not undertaken until after it had received the Notice described in Finding of Fact "1", supra.

thereafter, petitioner contacted Nathan Prefer,² Tax Compliance Manager of the Suffolk District Office, and informed him that withholding taxes for 1977 and 1978 had not been paid. However, according to Mr. Wainer, Mr. Prefer "told us the taxes were paid." Petitioner disagreed and asked Mr. Prefer to "check it again and we will check it again." Mr. Wainer testified further that in the latter part of 1979, petitioner again contacted Mr. Prefer to insist that the withholding taxes were not paid. "He then acknowledged it in the early part of 1980, and we said hey, you know we could have worked out payment...when we first came to you..."

7. Mr. Prefer informed petitioner in his letter of March 14, 1980 that he would "recommend a total penalty waiver based upon your client's pre-assessment efforts, to resolve this delinquency on his (sic) own initiative."

8. On or about July 17, 1980, petitioner paid its 1977 withholding taxes and \$33,189.38 of the 1978 withholding taxes of \$59,139.35. Petitioner agreed to pay the balance at the rate of \$4,000.00 per month.

9. Petitioner, a closely-held corporation owned by the Soltak family, provides engineering services mostly in the area of sophisticated weaponry systems. During the years at issue, it employed between thirty-nine to fifty-eight employees.

CONCLUSIONS OF LAW

A. That petitioner did not have an agreement with the Audit Division that penalties would be waived and interest reduced in consideration of its payment of overdue withholding taxes. The Tax Compliance Manager of the Suffolk

² It is unclear why petitioner contacted Mr. Prefer when the Notice of Unbalanced Account dated February 6, 1979 directed petitioner to contact the Withholding Tax Unit in Albany, New York.

District Office, as noted in Finding of Fact "7", supra, merely recommended that penalties should be waived.

B. That Tax Law §685(a)(1) imposes a penalty for failure to file a tax return on or before the prescribed date and Tax Law §685(a)(2) imposes a penalty for failure to pay the tax shown on a tax return on or before the prescribed date "unless it is shown that such failure is due to reasonable cause and not due to willful neglect...". This basis for cancelling a penalty is modelled after 26 U.S.C. §§6651 and 6656 of the Internal Revenue Code.

C. That Treas. Reg. §301.6651-1(c) provides as follows:

"A failure to pay will be considered to be due to reasonable cause to the extent that the taxpayer has made a satisfactory showing that he exercised ordinary business care and prudence in providing for payment of his tax liability and was nevertheless either unable to pay the tax or would suffer an undue hardship...if he paid on the due date."

D. That petitioner has failed to show that it exercised ordinary business care and prudence in providing for the payment of 1977 and 1978 withholding taxes. In the absence of such showing, it cannot be concluded that petitioner's failure to timely file and pay withholding taxes was due to reasonable cause and not due to willful neglect. Furthermore, petitioner's failure to make timely tax payments and to timely file withholding tax returns does "not reflect the sort of defective office procedure or isolated incident of untimely filing which would constitute reasonable cause for delay." Obstetrical & Gynecological Group, P.A. v. U.S., 79-2 U.S.T.C. ¶9511. Rather pursuant to Finding of Fact "5", supra, it appears that petitioner suffered a complete breakdown of its bookkeeping department.

E. That the petition of Support Systems Associates, Inc. is denied.

DATED: Albany, New York

STATE TAX COMMISSION

NOV 10 1983


PRESIDENT


COMMISSIONER


COMMISSIONER