

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Stanley Feldman :
AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or for Refund :
of New York State Personal Income Tax under Article :
22 of the Tax Law and New York City Personal :
Income Tax under Chapter 46, Title T of the :
Administrative Code of the City of New York for :
the Year 1979. :
:

State of New York }
ss.:
County of Albany }

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 20th day of January, 1984, he served the within notice of Decision by certified mail upon Stanley Feldman, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Stanley Feldman
c/o Roberts & Leinwander Co.
225 W. 34th St.
New York, NY 10122

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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
20th day of January, 1984.

David Parchuck

Chunnie A. Hagan Authorized to administer oaths
pursuant to Tax Law Section 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Stanley Feldman :
AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or for Refund :
of New York State Personal Income Tax under :
Article 22 of the Tax Law and New York City :
Personal Income Tax under Chapter 46, Title T of :
the Administrative Code of the City of New York :
for the Year 1979. :

State of New York }
ss.:
County of Albany }

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 20th day of January, 1984, he served the within notice of Decision by certified mail upon Seymour Goldstein, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Seymour Goldstein
Roberts & Leinwander Co.
225 West 34th St.
New York, NY 10122

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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
20th day of January, 1984.

David Parchuck

William G. Hughes
pursuant to Tax Law Section 174

Authorized to administer oaths

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

January 20, 1984

Stanley Feldman
c/o Roberts & Leinwander Co.
225 W. 34th St.
New York, NY 10122

Dear Mr. Feldman:

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 & 1312 of the Tax Law and Chapter 46, Title T of the Administrative Code of the City of New York, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only 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
Seymour Goldstein
Roberts & Leinwander Co.
225 West 34th St.
New York, NY 10122
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
STANLEY FELDMAN	:	DECISION
	:	
for Redetermination of a Deficiency or for	:	
Refund of New York State Personal Income Tax	:	
under Article 22 of the Tax Law and New York	:	
City Personal Income Tax under Chapter 46,	:	
Title T of the Administrative Code of the City	:	
of New York for the Year 1979.	:	

Petitioner, Stanley Feldman, c/o Roberts & Leinwander Co., 225 West 34th Street, New York, New York 10122, filed a petition for redetermination of a deficiency or for refund of New York State personal income tax under Article 22 of the Tax Law and New York City personal income tax under Chapter 46, Title T of the Administrative Code of the City of New York for the year 1979 (File No. 32460).

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 June 24, 1983 at 9:00 A.M. Petitioner appeared by Seymour Goldstein, CPA. The Audit Division appeared by John P. Dugan, Esq. (Paul Lefebvre, Esq., of counsel).

ISSUE

Whether petitioner is liable for penalties asserted under section 685(g) of the Tax Law and section T46-185.0(g) of the Administrative Code of the City of New York.

FINDINGS OF FACT

1. Stanley Looms, Inc., 1411 Broadway, New York, New York 10018, failed to pay over the total New York State and New York City personal income taxes withheld from the wages of its employees for the period July 16, 1979 through October 26, 1979.

2. On June 30, 1980, the Audit Division issued a Statement of Deficiency in conjunction with a Notice of Deficiency against Stanley Feldman (hereinafter petitioner) wherein penalties were asserted pursuant to section 685(g) of the Tax Law and section T46-185.0(g) of the Administrative Code of the City of New York for an amount allegedly equal to the total New York State and New York City withholding taxes due from Stanley Looms, Inc. for said period.

3. The deficiency initially asserted for said period pursuant to the Notice of Deficiency was \$10,297.03. Subsequently, said amount was reduced to \$2,172.06, which both the petitioner and the Audit Division agree is the correct amount currently due from Stanley Looms, Inc. for the period at issue. Such amount is comprised of \$1,734.10 due New York State and \$437.96 due New York City.

4. Petitioner, who was president of Stanley Looms, Inc., admitted that he was the person responsible for the collection and payment of withholding taxes during the period at issue.

5. Petitioner alleged that Stanley Looms, Inc. went out of business on October 10, 1979. New York State filed an amended priority claim on December 31, 1981 with the Supreme Court, County of New York, in the Matter of the Assignment of Stanley Looms, Inc. Such claim was for the withholding taxes currently at issue of \$2,172.06 plus interest and superseded a prior claim filed on or about March 18, 1980 for \$10,297.03 plus interest.

6. Petitioner contended that he should not be held liable for the penalties asserted herein since the New York Credit Men's Adjustment Bureau, Inc., assignee in the Matter of the General Assignment for the Benefit of Creditors of Stanley Looms, Inc., has sufficient funds available for payment of the corporate withholding tax liability and that such payment will be made in the near future.

CONCLUSIONS OF LAW

A. That section 685(g) of the Tax Law and section T46-185.0(g) of the Administrative Code of the City of New York provide that:

"Any person required to collect, truthfully account for and pay over the tax imposed by this article/part 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 the assignee may be holding sufficient funds to cover payment of withholding taxes due from Stanley Looms, Inc. for the period at issue does not bar the Audit Division from asserting a penalty against petitioner under section 685(g) of the Tax Law and section T46-185.0(g) of the Administrative Code of the City of New York. Matter of Nat Ross, State Tax Commission decision, July 15, 1983.

C. That, as petitioner readily admitted, he was a person responsible for the collection and payment of the withholding taxes at issue. Accordingly, he is subject to the penalties imposed under section 685(g) of the Tax Law and section T46-185.0(g) of the Administrative Code of the City of New York.

D. That the petition of Stanley Feldman is denied and the Notice of Deficiency dated June 30, 1980 is sustained in the adjusted amount of \$2,172.06.

DATED: Albany, New York

STATE TAX COMMISSION

JAN 20 1984

Roderick W. Clun
PRESIDENT

Francis R. Koeng
COMMISSIONER

Mark J. Feldman
COMMISSIONER