

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
 of :
 Myrna Kanter :

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 1978. :

: AFFIDAVIT OF MAILING

In the Matter of the Petition :
 of :
 Janice Blodnick :

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 1978. :

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 31st day of July, 1984, he served the within notice of Decision by certified mail upon Janice Blodnick, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Janice Blodnick
28 Bucknell Dr.
Plainview, NY 11803

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.

Page 2

Affidavit of Mailing

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
31st day of July, 1984.

David Parschuck

James A. Haggard
Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

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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 31st day of July, 1984, he served the within notice of Decision by certified mail upon Myrna Kanter, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Myrna Kanter
10 Hunting Hill Rd.
Woodbury, NY 11797

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.

Page 2
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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.

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STATE TAX COMMISSION

In the Matter of the Petition
of
Janice Blodnick
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
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Affidavit of Mailing

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
31st day of July, 1984.

David Archuck

James Archuck
Authorized to administer oaths
pursuant to Tax Law section 174

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

July 31, 1984

Janice Blodnick
28 Bucknell Dr.
Plainview, NY 11803

Dear Ms. Blodnick:

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
Helen Ampolsky
105-22 Flatlands 9th St.
Brooklyn, NY 11236
Taxing Bureau's Representative

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

July 31, 1984

Myrna Kanter
10 Hunting Hill Rd.
Woodbury, NY 11797

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Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Helen Ampolsky
105-22 Flatlands 9th Street
Brooklyn, NY 11236
Taxing Bureau's Representative

STATE TAX COMMISSION

DECISION

A consolidated 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 December 12, 1983 at 1:15 P.M., with all briefs

to be submitted by February 7, 1984. Petitioners appeared by Helen Ampolsky. The Audit Division appeared by John P. Dugan, Esq. (Angelo Scopellito, Esq., of counsel).

ISSUES

I. Whether petitioner Myrna Kanter is subject to penalties 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, as a person who willfully failed to collect, truthfully account for and pay over the New York State and New York City withholding taxes due from Bedford TV Service Corp. for the year 1978.

II. Whether petitioner Janice Blodnick is subject to penalties 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, as a person who willfully failed to collect, truthfully account for and pay over the New York State and New York City withholding taxes due from Bedford TV Service Corp. for the year 1978.

FINDINGS OF FACT

1. Bedford TV Service Corp. (Bedford), 567 Driggs Avenue, Brooklyn, New York 11211, failed to pay over the full New York State and New York City personal income taxes withheld from the wages of its employees for the calendar year 1978.

2. On December 29, 1980, the Audit Division issued a Statement of Deficiency in conjunction with a Notice of Deficiency against petitioner Myrna Kanter 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 amounts equal to the New York State and New York City withholding taxes due from Bedford for said year. Said penalty was asserted on the grounds that petitioner was a person required to collect, truthfully account for and pay

over said taxes, and that she willfully failed to do so. A similar set of documents was issued against petitioner Janice Blodnick under the same date. The deficiency asserted therein and the Audit Division's grounds for asserting such deficiency were identical to those of petitioner Myrna Kanter.

3. The total deficiency asserted against each petitioner for said year was \$2,349.40. Said amount was computed as follows:

	<u>New York State</u>	<u>New York City</u>	<u>Total</u>
Amounts withheld per Reconciliation			
of Tax Withheld - 1978	\$3,237.90	\$1,099.30	\$4,337.20
Less Payments (\$885.30 & \$1,102.50)			<u>1,987.80</u>
Balance Due			<u>\$2,349.40</u>

The payments credited were pursuant to a Tax Compliance Bureau accounts receivable computer transcript of the account of Bedford. According to such transcript, the payment of \$885.30 was made January 31, 1979 and the payment of \$1,102.50 was made April 13, 1979. The record herein does not indicate the jurisdiction to which each of said payments was applied.

4. Petitioners contended that they were not responsible for the collection and payment of the withholding taxes at issue. Pursuant to their respective petitions, each claimed that "I was not an officer or stockholder or had any connections with Bedford T.V. Service Corp., 567 Driggs Avenue, Brooklyn, N.Y., for the period from January 1, 1978 to December 31, 1978."

5. Petitioners submitted affidavits wherein each deposed and said that:

"1. I purchased the shares of stock of Bedford TV Service Inc. from the then stockholders, Joseph Fraum and George Caesar on December 5, 1978.

2. Prior to December 5, 1978, I had no connection and was in no way involved with Bedford TV Service Inc.

3. I further state that I was not involved in the payment of wages nor the withholding of payroll taxes, nor was I an officer of the corporation prior to December 5, 1978."

6. Petitioners' respective husbands, Myron A. Kanter and Edward K. Blodnick, submitted similar affidavits wherein each stated that:

a) He is an attorney duly-licensed to practice under the laws of New York State.

b) He represented the purchasers (petitioners) of the capital stock of Bedford on December 5, 1978. Such purchases being made from the aforestated previous stockholders.

c) Prior to December 5, 1978, petitioners were neither officers nor shareholders of Bedford.

7. No contract, sales agreement or other similar documentary evidence was submitted to establish that petitioners had purchased the stock of Bedford on December 5, 1978. Petitioners' representative claimed that the sales agreement had been destroyed in a fire and accordingly was unobtainable.

8. On the 1978 New York State Corporation Franchise Tax Report filed by Bedford, petitioner Janice Blodnick was listed as President and petitioner Myrna Kanter was listed as Secretary. Schedule D of such report lists no other officers or stockholders. No salaries were reported as being paid to petitioners in 1978. Said report was signed by petitioner Janice Blodnick on June 5, 1979. A previously filed Application for 3 Month Extension For Filing Tax Report was signed by petitioner Myrna Kanter as Secretary on March 13, 1979.

9. Petitioners submitted an affidavit from the certified public accountant who prepared the aforestated corporation franchise tax report wherein he stated that he erroneously listed petitioners as officers of Bedford on said report since they were officers at the time the report was filed. He further stated that he erroneously failed to list as officers, Joseph Fraum and George Caesar, who were the officers of Bedford prior to December 5, 1978.

10. The record is unclear with respect to the frequency with which Bedford filed withholding tax returns during 1978. Petitioners' representative alleged

that such returns were filed on a quarterly basis. The returns and reports received in evidence are as follows:

a) Reconciliation of Tax Withheld - Monthly Filer - such report, which indicates Bedford retained fifteen (15) employees during 1978, was signed by the aforestated certified public accountant on January 31, 1979.

b) New York State & City of New York Employer's Return of Tax Withheld - such return, which was filed for the period "1/1/78 to 3/31/78", was marked "1st qt" and was signed on February 28, 1979. The signature on this return is indecipherable.

c) New York State and City of New York - Employers Return of Tax Withheld - such return, which was filed for the full calendar year 1978, bears the signature "E. Blodnick" as President and was signed January 24, 1979.

11. Subsequent to the hearing held herein petitioners' representative submitted the following documents:

a) "Statement of Surrender of Stock Certificate" held by Joseph Fraum in Bedford, executed December 5, 1978. Such statement, which is handwritten and not notarized, surrenders a stock certificate issued to Joseph Fraum for 93 shares of Bedford back to the corporation "which will issue 2 new certificates in its place, one for 53 shares to Precision Holding Corp. and one for 40 shares to Joseph Fraum representing to Joseph Fraum a 20% ownership interest in Bedford T.V. Service Corp."

b) Unacknowledged Resignation of George Ceasar "as an Officer and Director of Bedford T.V. Service Corp., effective immediately". Said resignation is dated December 5, 1978.

c) Corporate banking resolution, executed December 7, 1978, giving authority for deposits to and withdrawals from Bedford's accounts to "Edward K. Blodnick, Myron A. Kanter, Bridie Hartnett, Al Gluck, Joseph Fraum and/or Janice Blodnick, singly." Authority for loans, credits and security was granted to "Edward K. Blodnick, Myron A. Kanter, Joseph Fraum, Janice Blodnick, any two." Said resolution certified that the present officers and the offices respectively held by them are as follows:

<u>Name</u>	<u>Title</u>
Janice Blodnick	Vice-President
Myrna Kanter	Secretary

d) "Statement of State & City Income Taxes Withheld" - Said statement breaks down monthly New York State and City taxes withheld

and separates same into four quarters for 1978. Such statement designates the aforestated payment of \$885.30 as being for the "4th quarter 1978".

Petitioners' representative claimed that this statement "was submitted to me by the State Tax Commission". However, said statement was drawn on stationery bearing her letterhead rather than that of the Commission or an agency within the Department of Taxation and Finance.

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 pursuant to section 685(n) of the Tax Law and section T46-185.0(n) of the Administrative Code of the City of New York, 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 Myrna Kanter has failed to sustain her burden of proof, required pursuant to section 689(e) of the Tax Law and section T46-189.0(e) of the Administrative Code of the City of New York, to show that she was not a person responsible for the collection and payment of New York State and City withholding taxes of Bedford for the year 1978. Accordingly, the penalties asserted against her with respect to said year are hereby sustained.

D. That petitioner Janice Blodnick has failed to sustain her burden of proof, required pursuant to section 689(e) of the Tax Law and section T46-189.0(e) of the Administrative Code of the City of New York, to show that she was not a person responsible for the collection and payment of New York State and City withholding taxes of Bedford for the year 1978. Accordingly, the penalties asserted against her with respect to said year are hereby sustained.


E. That the petition of Myrna Kanter is denied and the Notice of Deficiency issued against her on December 29, 1980 is sustained.

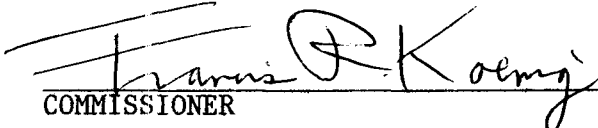
F. That the petition of Janice Blodnick is denied and the Notice of Deficiency issued against her on December 29, 1980 is sustained.

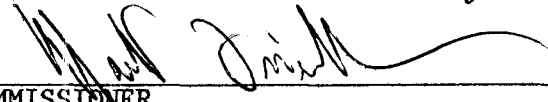
DATED: Albany, New York

STATE TAX COMMISSION

JUL 31 1984


PRESIDENT


COMMISSIONER


COMMISSIONER

REQUEST FOR BETTER ADDRESS

Requested by Tax Appeals Bureau Room 107 - Bldg. #9 State Campus Albany, New York 12227	Unit Tax Appeals Bureau Room 107 - Bldg. #9 State Campus Albany, New York 12227	Date of Request 8/22/84
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Please find most recent address of taxpayer described below; return to person named above.

Social Security Number	Date of Petition S.C. - Dec. 7/31/84
Name Janice Blodnick	
Address 28 Ducknell Dr. Plainview, N.Y. 11803	

Results of search by Files

<input type="checkbox"/> New address:	
<input type="checkbox"/> Same as above, no better address	
<input checked="" type="checkbox"/> Other:	Unclaimed

Searched by DP	Section	Date of Search 8/22/84
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PERMANENT RECORDFOR INSERTION IN TAXPAYER'S FOLDER

TA 26 (9-79)

STATE OF NEW YORK

State Tax Commission

TAX APPEALS BUREAU

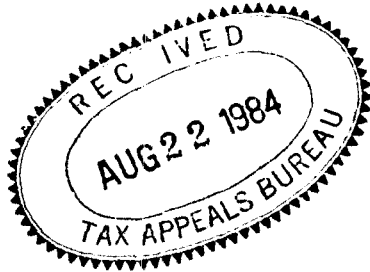
CAMPUS

N.Y. 12227

385920

DATE

Janice Blodnick
28 BUCKNELL DR
PLAINVIEW, NY 11803



CERTIFIED

P 440 977 329

MAIL

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

July 31, 1984

Janice Blodnick
28 Bucknell Dr.
Plainview, NY 11803

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Albany, New York 12227
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Janice Blodnick	Vice-President
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and separates same into four quarters for 1978. Such statement designates the aforestated payment of \$885.30 as being for the "4th quarter 1978".

Petitioners' representative claimed that this statement "was submitted to me by the State Tax Commission". However, said statement was drawn on stationery bearing her letterhead rather than that of the Commission or an agency within the Department of Taxation and Finance.

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 pursuant to section 685(n) of the Tax Law and section T46-185.0(n) of the Administrative Code of the City of New York, 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 Myrna Kanter has failed to sustain her burden of proof, required pursuant to section 689(e) of the Tax Law and section T46-189.0(e) of the Administrative Code of the City of New York, to show that she was not a person responsible for the collection and payment of New York State and City withholding taxes of Bedford for the year 1978. Accordingly, the penalties asserted against her with respect to said year are hereby sustained.

D. That petitioner Janice Blodnick has failed to sustain her burden of proof, required pursuant to section 689(e) of the Tax Law and section T46-189.0(e) of the Administrative Code of the City of New York, to show that she was not a person responsible for the collection and payment of New York State and City withholding taxes of Bedford for the year 1978. Accordingly, the penalties asserted against her with respect to said year are hereby sustained.

E. That the petition of Myrna Kanter is denied and the Notice of Deficiency issued against her on December 29, 1980 is sustained.

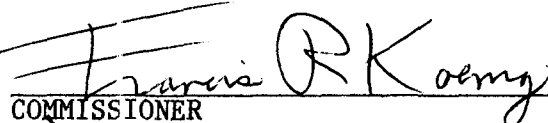
F. That the petition of Janice Blodnick is denied and the Notice of Deficiency issued against her on December 29, 1980 is sustained.


DATED: Albany, New York

STATE TAX COMMISSION

JUL 31 1984


PRESIDENT


COMMISSIONER


COMMISSIONER