

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
Ronald Liffman	:	
for Redetermination of a Deficiency or Revision	:	AFFIDAVIT OF MAILING
of a Determination or Refund of Personal Income	:	
Tax under Article 22 of the Tax Law for the Years	:	
1975 & 1976.	:	

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

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 1st day of June, 1984, he served the within notice of Decision by certified mail upon Ronald Liffman, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

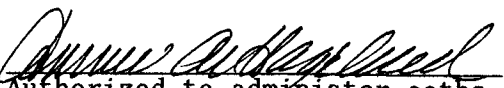
Ronald Liffman  
201 E. 28th St.  
New York, NY 10016

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  
1st day of June, 1984.

  
\_\_\_\_\_

  
Authorized to administer oaths  
pursuant to Tax Law section 174

STATE TAX COMMISSION

In the Matter of the Petition  
of  
Ronald Liffman  
for Redetermination of a Deficiency or Revision  
of a Determination or Refund of Personal Income  
Tax under Article 22 of the Tax Law for the Years  
1975 & 1976.

### AFFIDAVIT OF MAILING

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

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 1st day of June, 1984, he served the within notice of Decision by certified mail upon Gary N. Moss, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Gary N. Moss  
Moss & Kalish  
122 E. 42nd St.  
New York, NY 10168

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  
1st day of June, 1984.

David Parbuck

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

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

June 1, 1984

Ronald Liffman  
201 E. 28th St.  
New York, NY 10016

Dear Mr. Liffman:

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, 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  
Gary N. Moss  
Moss & Kalish  
122 E. 42nd St.  
New York, NY 10168  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
	:	
RONALD LIFFMAN	:	DECISION
	:	
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Years 1975 and 1976.	:	

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Petitioner, Ronald Liffman, 201 East 28th Street, New York, New York 10016, 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 1975 and 1976 (File No. 20692).

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 September 21, 1982 at 9:15 A.M., with all briefs to be submitted by October 30, 1983. Petitioner appeared by Moss & Kalish, Esqs. (Gary M. Moss, Esq., of counsel). The Audit Division appeared by Paul B. Coburn, Esq. (Anne Murphy, Esq., of counsel).

#### ISSUE

Whether petitioner is liable for the penalty asserted against him pursuant to section 685(g) of the Tax Law with respect to New York State withholding taxes due from Long Island Processing Corp.

#### FINDINGS OF FACT

1. Long Island Processing Corp. ("the corporation") failed to pay New York State personal income tax withheld from the wages of its employees in the amount of \$11,407.17 for the period January 16, 1975 to April 15, 1975 and \$1,690.51 for the period August 1, 1976 to August 15, 1976.

2. On July 25, 1977, the Audit Division issued a Notice of Deficiency accompanied by a Statement of Deficiency to petitioner, Ronald K. Liffman, asserting a penalty equal to the amount of unpaid withholding tax due from the corporation.

3. The corporation manufactured yarns suitable for knitting or dying. The yarns were then sold to other manufacturers for use in knitting fabrics.

4. Prior to the periods in issue, petitioner received a Bachelor of Science degree in textile engineering. Upon graduating from college, petitioner received a gift of five percent of the outstanding stock of the corporation.

5. During the periods in issue, petitioner held the title of vice-president. It was petitioner's primary responsibility to determine the proper mechanical settings for manufacturing filament polyester yarns which were suitable for machine knitting. He was also responsible for determining if the corporation was meeting the production and technical limitations that had been established. Petitioner also had some involvement with sales. Petitioner worked from forty to sixty hours a week for the corporation.

6. On infrequent occasions, petitioner would sign the bank draft to draw the funds needed for the company's payroll. However, this authority was exercised on infrequent occasions when Mr. Hans Liffman, who was petitioner's father and president of the corporation, was unavailable. Petitioner's payroll check would be prepared by the corporation's bookkeeper and comptroller.

7. Petitioner had no involvement in the financial affairs of the corporation. He had authority to examine the corporation's books and records, but did not have the training to understand them.

8. Petitioner could not hire or fire employees without the approval of Mr. Hans Liffman. However, petitioner did supervise some employees.

9. The only purchases Ronald Liffman made for the corporation were small purchases of office supplies. He did not purchase major office equipment on behalf of the corporation.

10. The corporation's withholding tax returns were prepared by the corporation's bookkeeper and comptroller. Ronald Liffman did not sign the withholding tax returns. In addition, he did not sign the corporation's tax returns.

11. On April 4, 1975, the corporation filed for protection under the Bankruptcy Act of the United States. Upon filing, Hans K. Liffman was permitted to continue to manage the corporation. However, the corporation needed the approval of the court to disburse funds.

12. On September 2, 1976, Mr. William Otte was appointed as the trustee of the corporation and Hans K. Liffman and petitioner surrendered their roles with the corporation. Mr. Otte remained as the trustee throughout the conclusion of the periods in issue.

13. The corporation has claims for refund based upon a net operating loss carryback in the amount of \$9,010.00 from New York State and \$7,210.00 from New York City. These claims have not been filed with the Audit Division because the corporation has not been able to obtain Federal form 4188 which petitioner believes is a prerequisite to a refund claim. The reason this form was not received was because the Federal refund due the corporation was applied to another liability. On October 13, 1977, petitioner filed with his petition corporate refund claims with the intention of placing the State Tax Commission on notice of refunds due to the corporation.

#### CONCLUSIONS OF LAW

A. That the penalty imposed upon the failure to collect, truthfully account for and pay over withholding taxes is in the nature of a penalty and

personal to petitioner [Tax Law §685(g)]. Accordingly, whether or not the corporation is entitled to a refund is irrelevant to this determination. It is noted that no determination is being made in this decision as to whether or not the corporation is entitled to a refund based upon a net operating loss. Similarly, it is noted that since the penalty asserted pursuant to section 685(g) of the Tax Law is personal in nature, the fact that the estate in bankruptcy may have had sufficient funds to satisfy the withholding tax liability is irrelevant.

B. That the issue of whether petitioner is a person required to collect, truthfully account for and pay over withholding taxes during the period in issue is a question of fact (Matter of McHugh v. State Tax Comm., 70 A.D.2d 987; Matter of MacLean v. State Tax Comm., 69 A.D.2d 951, aff'd. 49 N.Y.2d 920). Factors which are relevant to the determination of the issue include whether petitioner owned stock, signed tax returns, or supervised employees (Matter of McHugh v. State Tax Comm., supra, p. 989; Matter of MacLean v. State Tax Comm., supra; Matter of Malkin v. Tully, 65 A.D.2d 228). Other factors which have been examined are whether the individual was authorized and did in fact sign checks and whether the individual had responsibilities regarding the payroll (Matter of McHugh v. State Tax Comm., supra). Moreover, the courts have examined the individual's official duties (Matter of Amengual v. State Tax Comm., 95 A.D.2d 949).

C. That in view of the fact that petitioner did not have any involvement with the preparation of tax returns, did not have any authority to either hire or fire employees, and had limited involvement with the payroll of the corporation, petitioner was not a person required to collect, truthfully account for

and pay over withholding taxes within the meaning of section 685(g) of the Tax Law.

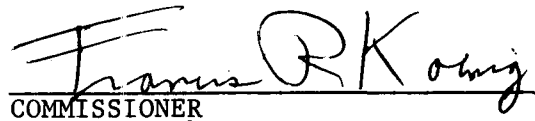
D. That the petition of Ronald Liffman is granted and the Notice of Deficiency issued July 25, 1977 is cancelled.

DATED: Albany, New York

STATE TAX COMMISSION

JUN 01 1984

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER