

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
William Maidman :  
for Redetermination of a Deficiency or for Refund :  
of Personal Income Tax under Article 22 of the Tax :  
Law for the Year 1972. :

AFFIDAVIT OF MAILING

In the Matter of the Petition :  
of :  
Richard H. Maidman :  
for Redetermination of a Deficiency or for Refund :  
of Personal Income Tax under Article 22 of the Tax :  
Law for the Year 1974. :

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 6th day of January, 1983, he served the within notice of Decision by certified mail upon Richard H. Maidman, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Richard H. Maidman  
485 Madison Ave.  
New York, NY 10022

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  
6th day of January, 1984.

Daniel Parchuck

James A. Chagall  
pursuant to Tax Law section 174

Authorized to administer oaths

STATE OF NEW YORK

STATE TAX COMMISSION

\_\_\_\_\_  
In the Matter of the Petition :  
of :  
William Maidman :  
for Redetermination of a Deficiency or for Refund :  
of Personal Income Tax under Article 22 of the Tax :  
Law for the Year 1972. :

AFFIDAVIT OF MAILING

\_\_\_\_\_  
In the Matter of the Petition :  
of :  
Richard H. Maidman :  
for Redetermination of a Deficiency or for Refund :  
of Personal Income Tax under Article 22 of the Tax :  
Law for the Year 1974. :

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 6th day of January, 1983, he served the within notice of Decision by certified mail upon William Maidman, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

William Maidman  
c/o Richard H. Maidman, Esq.  
485 Madison Ave., Room 902  
New York, NY 10022

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  
6th day of January, 1984.



\_\_\_\_\_  
pursuant to Tax Law section 174

Authorized to administer oaths

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

January 6, 1984

Richard H. Maidman  
485 Madison Ave.  
New York, NY 10022

Dear Mr. Maidman:

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: Taxing Bureau's Representative

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

January 6, 1984

William Maidman  
c/o Richard H. Maidman, Esq.  
485 Madison Ave., Room 902  
New York, NY 10022

Dear Mr. Maidman:

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: Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

---

In the Matter of the Petition	:	
	:	
of	:	
	:	
WILLIAM MAIDMAN	:	
	:	
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1972.	:	

---

DECISION

---

In the Matter of the Petition	:
	:
of	:
	:
RICHARD H. MAIDMAN	:
	:
for Redetermination of a Deficiency or for	:
Refund of Personal Income Tax under Article 22	:
of the Tax Law for the Year 1974.	:

---

Petitioner, William Maidman, c/o Richard H. Maidman, 485 Madison Avenue, New York, New York 10022, 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 1972 (File No. 19326).

Petitioner, Richard H. Maidman, 485 Madison Avenue, New York, New York 10022, 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 1974 (File No. 24544).

A consolidated formal hearing was held before Doris E. Steinhardt, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on November 19, 1982 at 11:00 A.M. Petitioners appeared by Richard H. Maidman, Esq. (Eleizer A. Cohen, Esq., of counsel). The Audit Division appeared by Paul B. Coburn, Esq. (Irwin Levy, Esq., of counsel).

ISSUES

I. Whether petitioners were persons required to collect, truthfully account for and pay over income taxes withheld, who willfully failed to do so, and are therefore liable for the penalty imposed under section 685, subdivision (g) of the Tax Law.

II. Whether exclusive jurisdiction over these matters lies in the United States Bankruptcy Court, and therefore any proceeding to determine or collect the penalties imposed against petitioners is stayed or barred.

FINDINGS OF FACT

1. On March 28, 1977, the Audit Division issued to petitioner William Maidman a Statement of Deficiency and a Notice of Deficiency, asserting penalties equal to the amount of New York State withholding tax of 429 East 82nd Street Corp. ("82nd St. Corp.") which was due and unpaid for the year 1972 in the amount of \$770.69. Information gleaned by the Audit Division from the corporation tax files indicated that William Maidman was president of 82nd St. Corp. during 1972.

2. On or about January 23, 1973, 82nd St. Corp. filed a Reconciliation of Personal Income Tax Withheld (Form IT-2103) for 1972, reflecting tax withheld in the amount of \$8,948.05, and remitted therewith payment of \$8,177.36. Subsequently, on September 27, 1974, the Audit Division issued to the corporation a Notice and Demand for Unpaid Withholding Tax Due for the balance of \$770.69, plus penalty and interest.

3. The corporation filed a short form franchise tax report for 1972 (Form CT-4), stating that it had been inactive during the year and showing an address of "c/o Wm. Maidman & Co., 113 W. 42nd St., New York, New York 10036".

4. On July 31, 1978, the Audit Division issued to petitioner Richard H. Maidman a Statement of Deficiency and a Notice of Deficiency, asserting penalties equal to the amount of New York State withholding tax of 82nd St. Corp. which was due and unpaid for the year 1974 in the amount of \$6,121.22. Information gleaned by the Audit Division from the corporation tax files indicated that Richard H. Maidman was president of 82nd St. Corp. during 1974.

5. On June 10, 1976, the Audit Division had issued to 82nd St. Corp. a Notice and Demand for Unpaid Withholding Tax Due in the amount of \$6,121.22, plus penalty and interest.

6. In 1975, William Maidman instituted a proceeding in the United States District Court for the Southern District of Florida under Chapter XI of the Bankruptcy Act, in which proceeding the New York State Tax Commission filed a claim in the amount of \$23,972.25. The debtor filed objections to that claim, among others, and on November 6, 1981, the Honorable Thomas C. Britton, bankruptcy judge, ordered the Commission's claim stricken. William Maidman states in his written argument submitted after the formal hearing, however, that the claim was based upon sales and use taxes alleged to be owed by 82nd St. Corp. That claim and the expungement of that claim are therefore irrelevant to this proceeding.

On January 7, 1982, the case was transferred to the United States District Court for the Southern District of New York in order that it might be administered in conjunction with other related bankruptcies. The order transferring the case recited:

"The debtor's plan has been confirmed and funded. All fees, costs and other expenses incurred in this District have been paid. There remains \$62,667.13 in the hands of the Disbursing Agent. The debtor now seeks refund from those funds of \$20,616.47 to Fashion Wear, Inc. (a related New York debtor in possession) and \$42,050.66 to Richard and David Maidman (this debtor's sons, who are also related New York

debtors in possession). This court defers to the New York court for a ruling on the motion for refunds."

7. Petitioner Richard H. Maidman, doing business as (inter alia) 429 E. 82nd Street Company, instituted a proceeding in the United States District Court for the Southern District of New York under Chapter XII of the Bankruptcy Act, in which proceeding the New York State Tax Commission filed a claim for withholding tax for the period December 1 through December 31, 1974 in the amount of \$2,489.09, plus interest of \$768.50. On January 14, 1982, the Honorable Joel Lewittes, bankruptcy judge, confirmed the debtor's plan and ordered, among other things, that:

"a. The debtor is released from all dischargeable debts;

"b. Any judgment heretofore or hereafter obtained in any court other than this Court is null and void as a determination of personal liability of the debtor with respect to any of the following:

i. debts dischargeable under Section 17a of the Act;

ii. unless heretofore or hereafter determined by Order of this Court to be nondischargeable, debts alleged to be excepted from discharge under clauses (2) and (4) of Section 17a of the Act;

iii. unless heretofore or hereafter determined by Order of this Court to be nondischargeable, debts alleged to be excepted from discharge under clause (8) of Section 17a of the Act, except those debts on which there was an action pending on April 3, 1978, the date when the first petition was filed initiating a case under the Act in which a right to jury trial existed and a party had either made a timely demand therefor or has submitted to this Court a signed statement of intention to make such a demand;

iv. debts determined by this Court to be discharged under Section 17c(3) of the Act.

"c. Any judgment heretofore or hereafter obtained in any court other than this Court is null and void as a determination of the liability of any of the debtor's property or as a lien or encumbrance thereon."



Richard H. Maidman states in his written argument submitted after the formal hearing that he had no control over the financial aspects of the corporation, nor did he exercise control over the day-to-day affairs of the corporation; and further, that the tax at issue herein must fall under section 17a of the Bankruptcy Act.

CONCLUSIONS OF LAW

A. That petitioners have adduced no testimony or documentary evidence on the first issue presented. Consequently, for 1972, petitioner William Maidman must be considered a person required to collect, truthfully account for and pay over taxes withheld from wages of employees of 429 East 82nd Street Corp., and who willfully failed to do so, within the meaning of subdivisions (g) and (n) of section 685 of the Tax Law; and for 1974, petitioner Richard H. Maidman must be considered a person required to collect, truthfully account for and pay over taxes withheld from wages of the corporation's employees, and who willfully failed to do so.

B. That petitioners' liability for the withholding taxes at issue was not discharged in their personal bankruptcy proceedings. United States v. Sotelo, 436 U.S. 268; 11 U.S.C.S. §35(a)(1)(e). The Audit Division was therefore not required to file claims for the full amount of the taxes in such proceedings, as a condition to imposing upon and collecting from the responsible persons the penalty provided by section 685, subdivision (g) of the Tax Law. Matter of Stanley Yellin, State Tax Comm., June 22, 1979, determination confirmed, Matter of Yellin v. N.Y.S. Tax Comm., 81 A.D.2d 196 (3d Dept.).

C. That the petition of William Maidman is hereby denied, and the Notice of Deficiency issued on March 28, 1977 is sustained in full.

The petition of Richard H. Maidman is also hereby denied, and the Notice of Deficiency issued on July 31, 1978 is sustained in full.

DATED: Albany, New York

STATE TAX COMMISSION

JAN 06 1984

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER