

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Joseph C. Sanzio :

AFFIDAVIT OF MAILING

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 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 14th day of December, 1984, he served the within notice of Decision by certified mail upon Joseph C. Sanzio, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Joseph C. Sanzio
219 Gordon's Corner Rd.
Marlboro, NJ 07746

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
14th day of December, 1984.





Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Joseph C. Sanzio : AFFIDAVIT OF MAILING
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Tax under Article 22 of the Tax Law for the Year :
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State of New York }
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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 14th day of December, 1984, he served the within notice of Decision by certified mail upon Mortimer J. Natkins, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mortimer J. Natkins
185 Madison Ave., 14th Fl.
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 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
14th day of December, 1984.

David Parchuck

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

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

December 14, 1984

Allen Nudelman
23 Walter St.
Old Tappan, NJ 07675

Dear Mr. Nudelman:

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
Mortimer J. Natkins
185 Madison Ave., 14th Fl.
New York, NY 10016
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Allen Nudelman : AFFIDAVIT OF MAILING
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 :
1977 & 1978.

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

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Allen Nudelman
23 Walter St.
Old Tappan, NJ 07675

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14th day of December, 1984.

David Parchuck

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

STATE OF NEW YORK

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In the Matter of the Petition :
of
Allen Nudelman : AFFIDAVIT OF MAILING
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 :
1977 & 1978.

State of New York }
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Sworn to before me this
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Authorized to administer oaths
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STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

December 14, 1984

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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
Mortimer J. Natkins
185 Madison Ave., 14th Fl.
New York, NY 10016
Taxing Bureau's Representative

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

December 14, 1984

Joseph C. Sanzio
219 Gordon's Corner Rd.
Marlboro, NJ 07746

Dear Mr. Sanzio:

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.

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STATE TAX COMMISSION

cc: Petitioner's Representative
Mortimer J. Natkins
185 Madison Ave., 14th Fl.
New York, NY 10016
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petitions	:	
	:	
of	:	
	:	
ALLEN NUDELMAN	:	
	:	
for Redetermination of Deficiencies or for	:	
Refunds of Personal Income Tax under Article	:	
22 of the Tax Law for the Years 1977 and 1978.	:	

DECISION

In the Matter of the Petitions	:
	:
of	:
	:
JOSEPH C. SANZIO	:
	:
For Redetermination of Deficiencies or for	:
Refunds of Personal Income Tax under Article	:
22 of the Tax law for the Years 1977 and 1978.	:

Petitioners, Allen Nudelman, 23 Walter Street, Old Tappan, New Jersey 07675 and Joseph C. Sanzio, 219 Gordon's Corner, Marlboro, New Jersey 07746, filed petitions for redetermination of deficiencies or for refunds of personal income tax under Article 22 of the Tax Law for the years 1977 and 1978 (File Nos. 32417 and 35973).

A formal hearing was held before Daniel J. Ranalli, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 24, 1984 at 9:15 A.M., with additional evidence to be submitted by July 20, 1984. Petitioners appeared pro se. The Audit Division appeared by John P. Dugan, Esq. (Irwin A. Levy, Esq., of counsel).

ISSUE

Whether petitioners, as persons required to collect, truthfully account for and pay over withholding taxes on behalf of Marc Lauren, Ltd., willfully

failed to do so and are thus liable to a penalty under section 685(g) of the Tax Law.

FINDINGS OF FACT

1. On August 25, 1980, the Audit Division issued a Notice of Deficiency, along with a Statement of Deficiency, asserting a penalty pursuant to section 685(g) of the Tax Law against petitioner Allen Nudelman, as a person required to collect, truthfully account for and pay over withholding taxes of Marc Lauren, Ltd. in the amount of \$824.04 for the period April 1, 1977 through April 30, 1977. On November 30, 1981, the Audit Division issued a second Notice of Deficiency asserting a 685(g) penalty against petitioner Allen Nudelman in the amount of \$3,833.49 for the period January 1, 1978 through December 31, 1978. On the same dates, the Audit Division issued identical notices of deficiency against petitioner Joseph C. Sanzio.

2. Petitioners were the owners of the stock of Marc Lauren, Ltd., a corporation engaged in the operation of a beauty salon. Mr. Sanzio was the president and Mr. Nudelman was the secretary. Checks could be signed by either petitioner. The corporation had three or four other employees during the periods in issue. The corporation ceased doing business in May or June, 1979.

3. During the period January 1, 1977 through May 31, 1977, petitioners remitted their withholding taxes on a monthly basis. The checks were generally dated the tenth of the month following each withholding period. Each monthly payment averaged between \$250.00 and \$300.00 for both New York State and City income taxes withheld. On September 28, 1977, the Audit Division issued a Notice and Demand for Payment of New York State and/or New York City Withholding Tax Due against Marc Lauren, Ltd. in the amount of \$824.04 plus penalty and interest for the period April 1, 1977 through April 30, 1977. It is unclear

from the record how such amount was determined; however, the amount served as the basis for the deficiencies issued against petitioners for the same period. Following the hearing, the Audit Division reviewed its account records and found that petitioners had, in fact, made payment for the April 1, 1977 through April 30, 1977 period in the amount of \$376.40, but that for unexplained reasons that same period appeared twice with two different amounts due: the \$376.40 as paid and the \$824.04 as billed to the corporation. Petitioners explained that they already paid the April withholding taxes and that the \$824.04 deficiency was a mistake in that their total withholdings for each month never approached such a large amount for any month during the periods in issue.

4. On or about January 30, 1979, someone had filed a Reconciliation of Tax Withheld (Form IT-2103) on behalf of Marc Lauren, Ltd. in the amount of \$3,833.49 for the period January 1, 1978 through December 31, 1978. No remittance accompanied the return. The signature on the return was unrecognizable, but it was not that of either petitioner. Said return served as the basis of the second deficiency issued against each petitioner. Petitioners maintained that it was inconceivable that no withholding taxes were paid for the entire year 1978. A review of the Audit Division records, however, indicated no payments received for 1978. Moreover, petitioners were unable to produce a single cancelled check indicating that any payments were made for 1978. Petitioners speculated that some of the payments may have been applied to other taxes due, however, no evidence was produced to corroborate such an occurrence.

5. Petitioners did not challenge the determination that they were persons required to collect, truthfully account for and pay over withholding taxes on

behalf of Marc Lauren, Ltd. Their sole contention is that all such taxes were paid over to the State.

CONCLUSIONS OF LAW

A. That section 685(g) of the Tax Law provides that any person required to collect, truthfully account for and pay over personal income tax, 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 for the period April 1, 1977 through April 30, 1977 petitioners filed a return and paid the withholding taxes due based on the Audit Division's own records. The \$824.04 deficiency appears to have been issued inadvertently inasmuch as the amount is completely out of line with the monthly amounts remitted during the rest of the first half of the year. Therefore, the \$824.04 deficiency for the period April 1, 1977 through April 30, 1977 is cancelled.

C. That for the period January 1, 1978 through December 31, 1978, petitioners have failed to meet their burden of proof as provided under section 689(e) of the Tax Law to show that the deficiency was erroneous. Other than being unsure about who filed the IT-2103 for 1978, petitioners could offer no evidence whatsoever that they made any payments of withholding taxes for 1978. Moreover, the deficiency of \$3,833.49 for the year equates to approximately \$320.00 per month which amount is in conformity with the monthly payments made during the previous year. Therefore, the amount appears to be accurate and, absent any proof of payment, the deficiency must be sustained.

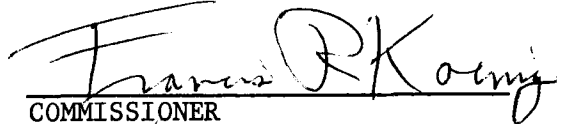
D. That the petitions of Allen Nudelman and Joseph C. Sanzio are granted to the extent indicated in Conclusion of Law "B"; that the notices of deficiency issued August 25, 1980 for the period April 1, 1977 through April 30, 1977 are cancelled; and that the notices of deficiency issued November 30, 1981 for the period January 31, 1978 through December 31, 1978 are sustained.

DATED: Albany, New York

STATE TAX COMMISSION

DEC 14 1984


PRESIDENT


COMMISSIONER


COMMISSIONER