

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Jack Rollins & Charles Joffe Productions
Woody Allen Summer Production : 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 and 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 18th day of July, 1984, he served the within notice of Decision by certified mail upon Jack Rollins & Charles Joffe Productions, Woody Allen Summer Production the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Jack Rollins & Charles Joffe Productions
Woody Allen Summer Production
130 West 57th Street
New York, NY 10015

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
18th day of July, 1984.

David Parchuck

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

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

July 18, 1984

Jack Rollins & Charles Joffe Productions
Woody Allen Summer Production
130 West 57th Street
New York, NY 10015

Gentlemen:

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, 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
Jeffrey A. Lubchansky
Bernstein & Freedman
228 West 55th St.
New York, NY 10019
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
JACK ROLLINS AND CHARLES JOFFE PRODUCTIONS -	:	DECISION
WOODY ALLEN SUMMER PROJECT	:	
	:	
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law and Chapter 46, Title T of the	:	
Administrative Code of the City of New York for	:	
the Year 1978.	:	

Petitioner, Jack Rollins and Charles Joffe Productions - Woody Allen Summer Project, 130 West 57th Street, New York, New York 10019, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law and Chapter 46, Title T of the Administrative Code of the City of New York for the year 1978 (File No. 37538).

A formal hearing was held before Frank W. Barrie, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on December 6, 1983 at 2:00 P.M. Petitioner appeared by Bernstein & Freedman, P.C. (Jeffrey Lubchansky, CPA). The Audit Division appeared by John P. Dugan, Esq. (Irwin Levy, Esq., of counsel).

ISSUE

Whether petitioner's failure to timely pay withholding taxes was due to reasonable cause and not due to willful neglect.

FINDINGS OF FACT

1. On March 16, 1980, the petitioner wrote to the Income Tax Bureau requesting information on the status of its withholding tax account for the years 1978 and 1979. After receiving no response to its letter, petitioner,

after some phone calls, obtained the name of Mildred Ryan of the Withholding Tax Unit and directed a follow-up letter dated July 18, 1980 to her attention which also requested information on the status of its withholding tax accounts.

2. The Withholding Tax Unit advised petitioner in a letter dated July 31, 1980 that petitioner owed New York State and New York City withholding taxes in the total amount of \$88,072.25 for 1978. However, petitioner waited until March, 1981 to pay the \$88,072.25 in unpaid withholding taxes. According to the testimony of petitioner's accountant, Jeffrey Lubchansky, the delay resulted from petitioner's reliance on a New York State employee of the Withholding Tax Unit named Ms. Molling. Mr. Lubchansky testified,

"(S)he'll (Ms. Molling) find out what to do for us, and tell us the best way to do it to try to avoid the penalty... (because) it wasn't intentional (failure to pay withholding taxes)..."

Amy Lubchansky, the accountant for the petitioner who discovered that checks in payment of withholding taxes had not cleared, provided an additional reason for petitioner's seven month delay in payment of the withholding tax:

"Once I heard from the State (the letter dated July 31, 1980), then it was a matter of getting the money from United Artists and complaining to them, which wasn't an easy task, and showing them all the documentation and all the (bank) reconciliations, because they weren't too happy about throwing over that money".

3. On April 10, 1981, the Tax Compliance Bureau issued a payment document showing a credit for petitioner's payment of \$88,072.25 and a balance due of \$52,689.24 consisting of penalty and interest. In a letter dated May 15, 1981, petitioner requested that penalty and interest be abated. The Withholding Tax Protest Unit, in a letter dated July 3, 1981, advised petitioner that interest must be collected on late payment of taxes but that "Penalty only may be cancelled upon the submission of an acceptable reasonable cause". In August,

1981, petitioner paid the interest portion of the balance due. According to Mr. Lubchansky, in exchange for paying the interest, Ms. Molling said she would "keep it from going upstairs". However, a short while later, petitioner's bank accounts were attached and the outstanding balance of \$36,256.28, which represented the penalty imposed on the unpaid withholding tax, was collected.

4. On November 23, 1981, petitioner requested a refund of such penalty. On December 28, 1981, the request for refund was denied by the Audit Division. According to the Withholding Tax Protest Unit:

"It is our viewpoint that prudent business practices were not exercised in this matter. If the problem had resulted from the isolated instance of one check and return being 'lost in transit', we might have negotiated the penalty portion of the assessment".

5. Petitioner was the production company organized to shoot the Woody Allen film, Manhattan. It hired an experienced production accountant, Kathy McGill, who was responsible for drawing payroll checks and filing and paying New York State/City withholding taxes. According to Michael Peyser, the unit production supervisor of Manhattan, "(M)illions of dollars are transacted in a very short period of time and in a very primitive way in a motion picture". In three months, petitioner spent \$4,000,000 on the production of Manhattan. Petitioner's payroll account was very active during the three to four month period when it was shooting and employing full crews. During such period it employed thousands of Screen Actors Guild members and 350 technicians.

6. All payroll checks were written by hand by Kathy McGill. Producer Robert Greenhut then signed the checks and passed them on to a representative of the United Artists Corporation, who co-signed. The same procedure was apparently utilized to pay withholding taxes. But, in addition, United Artists

would either send the tax checks to New York or return them to Ms. McGill for her to send out.

7. At the end of filming, petitioner hired an outside accountant to review its books and records and, in reconciling bank statements, the accountant discovered that the following ten checks in payment of withholding taxes were still outstanding:

<u>Month during 1978</u>	<u>Check #</u>	<u>Amount</u>
June	1210	\$ 614.99
July	20080	4,288.84
August	20179	7,543.08
September	1323	31,584.75
September	1324	13,440.31
September	1378	3,575.86
October	1471	7,402.33
October	1511	5,710.45
November	1619	930.83
December	1626	13,773.87 ¹
		<u>\$88,865.31</u>

According to Mr. Lubchansky, Ms. McGill failed to reconcile bank statements during the course of the filming for the following reason:

"(A) large scene shot with a tremendous amount of extras, and they (petitioner) were issuing a lot of checks, and Ms. McGill had to make a decision to pay the bills, file the payroll taxes, or stop everything and do bank reconciliations".

8. According to Mr. Peyser, petitioner has never determined how the checks were lost:

"We can't lay the blame on anyone in particular on where these checks were lost. Whether she (Ms. McGill) signed them, whether the co-signator (United Artists' representative) signed them, whether the secretary lost them fully filled out, ready to send out to the state. We can't identify that, but in the flurry of activity that would happen in a motion picture, and its accountancy, it was not until the bank reconciliation was done. At that point, we duly noted that there was a problem, and we went to rectify it as quickly as possible".

¹ The difference between this amount and \$88,072.25, which the Withholding Tax Unit advised petitioner was outstanding as noted in Finding of Fact "2", supra, (or \$793.06) is unexplained.

Mr. Peyser also noted that Ms. McGill was the "most qualified production accountant in the motion picture business", and that she currently operates her own corporation which provides direct production accounting services to three or four major motion pictures at the same time.

9. Petitioner has implemented a new accounting system in response to the problem described herein:

"I (Mr. Peyser) have a representative of Orion Pictures Corporation, who is now funding the (Woody Allen) pictures, review the bank reconciliations on a regular basis".

In addition, bank statements are received on a weekly (rather than a monthly) basis and reconciliations are therefore simpler.

10. Manhattan was a fully financed production, and petitioner did not intentionally fail to pay its withholding tax liability.

CONCLUSIONS OF LAW

A. That section 685(a)(2) of the Tax Law and section T46-185.0(a)(2) of the Administrative Code of the City of New York impose a penalty for failure to pay the tax shown on a tax return on or before the prescribed date "unless it is shown that such failure is due to reasonable cause and not due to willful neglect...". This basis for cancelling a penalty is modelled after §§6651 and 6656 of the Internal Revenue Code.

B. That Treas. Reg. §301.6651-1(c) provides as follows:

"A failure to pay will be considered to be due to reasonable cause to the extent that the taxpayer has made a satisfactory showing that he exercised ordinary business care and prudence in providing for payment of his tax liability and was nevertheless either unable to pay the tax or would suffer an undue hardship...if he paid on the due date".

C. That petitioner has failed to show that it exercised ordinary business care and prudence in providing for the payment of 1978 withholding taxes. In


the absence of such showing, it cannot be concluded that petitioner's failure to timely pay withholding taxes was due to reasonable cause and not due to willful neglect. Furthermore, petitioner's failure to make timely tax payments does not reflect the sort of defective office procedure or isolated incident of untimely payment which would constitute reasonable cause for delay. See Obstetrical & Gynecological Group, P.A. v. U.S., 79-2 U.S.T.C. ¶9511. Rather, petitioner failed to employ sufficient staff so that reconciliations of bank statements could be timely performed and payment of creditors properly verified.

D. That the petition of Jack Rollins and Charles Joffe Productions - Woody Allen Summer Project is denied.

DATED: Albany, New York

STATE TAX COMMISSION

JUL 18 1984


PRESIDENT


COMMISSIONER

 
COMMISSIONER