

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Jacques P. Caussin :

AFFIDAVIT OF MAILING

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 14th day of March, 1985, he served the within notice of Decision by certified mail upon Jacques P. Caussin, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Jacques P. Caussin
RD #4 Box 408
Sussex, NJ 07461

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 March, 1985.

David Parchuck

Gennie D. Haglund
Authorized to administer oaths
pursuant to Tax Law section 174

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

March 14, 1985

Jacques P. Caussin
RD #4 Box 408
Sussex, NJ 07461

Dear Mr. Caussin:

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: Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
JACQUES P. CAUSSIN	:	DECISION
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.	:	

Petitioner, Jacques P. Caussin, RD #4, Box 408, Sussex, New Jersey 07461, filed a petition 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 (File No. 38727).

A 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 October 2, 1984 at 1:15 P.M. Petitioner appeared pro se. The Audit Division appeared by John P. Dugan, Esq. (Angelo Scopellito, Esq., of counsel).

ISSUE

Whether petitioner, Jacques P. Caussin, 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 City withholding taxes due from Paul Cormack, Inc. for the year 1978.

FINDINGS OF FACT

1. Paul Cormack, Inc. (hereinafter "the corporation"), 227 West 29th Street, New York, New York 10001, failed to pay over New York State and New York City personal income taxes of \$2,005.95 which were withheld from the wages of its employees for the period January 1, 1978 through August 31, 1978.

2. On March 29, 1982, the Audit Division issued a Statement of Deficiency in conjunction with a Notice of Deficiency against Jacques P. Caussin (hereinafter "petitioner") wherein penalties were asserted pursuant to sections 685(g) of the Tax Law and T46-185.0(g) of the Administrative Code of the City of New York for an amount equal to the total New York State and City withholding taxes due from the corporation for the aforesated period. Such penalties were asserted on the grounds that petitioner was a person required to collect, truthfully account for and pay over said taxes and that he willfully failed to do so.

3. During the period at issue petitioner was Secretary of the corporation. He was also a director and 20 percent stockholder in the corporation.

4. During the period at issue the corporation's activities consisted of the design and sale of ladies eveningwear in the wholesale market. Petitioner described his position with the corporation as "general manager". His duties consisted of "everything but the creative part".

5. Petitioner was an authorized signatory on the corporation's checking account. It was his responsibility to supervise the filing of withholding tax returns.

6. Petitioner contended that due to business differences with the president, his employment with the corporation was terminated on April 21, 1978. On August 7, 1978 his employment was reinstated with no change in his duties or responsibilities.

7. Petitioner received unemployment insurance benefits during the fifteen (15) week period he was purportedly away from the corporation.

8. Petitioner alleged that during the aforestated fifteen (15) week period he had no involvement with the corporation.

9. No documentary evidence was submitted to establish that petitioner had severed his relationship with the corporation during the period he was receiving unemployment insurance benefits.

10. An Accounts Receivable System computer printout dated September 11, 1981 for the account of the corporation shows that of the \$2,005.95 at issue, \$1,456.60 is with respect to unpaid New York State tax and \$549.35 is with respect to unpaid New York City tax.

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 the tax imposed by this article who willfully fails to collect such tax or truthfully account for and payover 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."

That for New York City purposes, section T46-185.0(g) of the Administrative Code of the City of New York contains a similar provision.

B. That sections 685(n) of the Tax Law and T46-185.0(n) of the Administrative Code of the City of New York provide that, for purposes of subdivision (g), the term person:

"[I]ncludes 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 Jacques P. Caussin has failed to sustain his burden of proof, imposed pursuant to sections 689(e) of the Tax Law and T46-189.0(e) of the Administrative Code of the City of New York, to show that he was not a person responsible for the collection and payment of New York State and City withholding taxes of the corporation for any portion of the period at issue herein. Accordingly, petitioner is subject to the penalties imposed pursuant to sections 685(g) of the Tax Law and T46-185.0(g) of the Administrative Code of the City of New York.

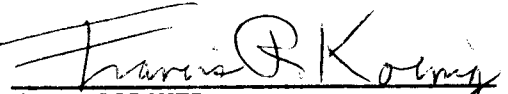
D. That the petition of Jacques P. Causin is denied and the Notice of Deficiency dated March 29, 1982 is sustained.

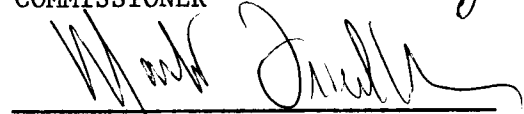
DATED: Albany, New York

STATE TAX COMMISSION

MAR 14 1985


PRESIDENT


COMMISSIONER


COMMISSIONER