

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Daniel S. Goodman :
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 Years 1979 and 1980. :
:

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 7th day of November, 1985, he served the within notice of Decision by certified mail upon Daniel S. Goodman, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Daniel S. Goodman
89 Libby Lane
Somerville, NJ 08876

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
7th day of November, 1985.

David Parchuck

Orlando DeHaviland
Authorized to administer oaths
pursuant to Tax Law section 174

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

November 7, 1985

Daniel S. Goodman
89 Libby Lane
Somerville, NJ 08876

Dear Mr. Goodman:

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	:	
DANIEL S. GOODMAN	:	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 the New York for the Years 1979 and 1980.	:	

Petitioner, Daniel S. Goodman, 89 Libby Lane, Somerville, New Jersey 08876, 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 years 1979 and 1980 (File No. 47803).

A 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 May 22, 1985 at 10:45 A.M. Petitioner appeared pro se. The Audit Division appeared by John P. Dugan, Esq. (Herbert Kamrass, Esq., of counsel).

ISSUE

Whether petitioner, Daniel S. Goodman, is subject to penalties under 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 New York City withholding taxes due from Computer Systems Store, Inc. for the years 1979 and 1980.

FINDINGS OF FACT

1. Computer Systems Store, Inc. ("Computer Systems"), 40 East 52nd Street, New York, New York 10022, failed to pay over the New York State and New York City personal income taxes withheld from the wages of its employees for the following periods:

<u>Withholding Tax Period</u>	<u>Amount</u>
January 1, 1979 through December 31, 1979	\$6,377.66
January 1, 1980 through January 31, 1980	256.30
April 1, 1980 through December 31, 1980	384.45
Total	<u>\$7,018.41</u>

2. On July 25, 1983, the Audit Division issued a Statement of Deficiency in conjunction with a Notice of Deficiency against Daniel S. Goodman (hereinafter "petitioner") wherein penalties were asserted 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 for amounts equal to the total New York State and New York City withholding taxes due from Computer Systems for the aforesated periods. Said penalties were asserted on the grounds that petitioner was a person required to collect, truthfully account for and pay over the withholding taxes at issue, and that he willfully failed to do so.

3. During the years at issue, Computer Systems operated in New York and New Jersey. In early 1979, petitioner, who was President of Computer Systems, hired one Donald Sinsabaugh to manage the New York operation. According to the petitioner, Mr. Sinsabaugh was given the titles Executive Vice President and Vice President in Charge of Finance.

4. In July, 1979, petitioner discovered that the withholding taxes at issue were not being paid over to the State and City of New York. Accordingly, he claimed that he "fired" Mr. Sinsabaugh, whose duties, he alleged, included the preparation and proper filing of withholding tax returns. However, the true

nature and circumstances of Mr. Sinsabaugh's termination is unclear in view of the fact that the record contains a notice of resignation executed by Mr. Sinsabaugh on August 24, 1979, which states:

"I need not list the issues on which we have disagreed over the last year. Suffice it to say that every decision that I have made was in good faith and in the best interest of the corporation. Increasingly, I found many of your decisions to not be in the best interest of the corporation and could not effect my decisions upon company policy.

For that and other good reasons, I hereby resign from my positions as Executive Vice President, Treasurer, Secretary and Director of The Computer Systems Store, Inc."

5. Petitioner admitted responsibility for that portion of the withholding taxes at issue commencing July, 1979 through late May, 1980, at which time he alleged Computer Systems ceased operations. He argued that Mr. Sinsabaugh was responsible for the balance of such withholding taxes attributable to the period prior to July, 1979.

6. Petitioner contended that during the years at issue he managed the New Jersey operation and personally appeared at the New York office approximately one (1) day per month.

7. Petitioner submitted two (2) affidavits from former employees of Computer Systems and a statement from an officer of the bank which conducted business with Computer Systems wherein it was indicated that Mr. Sinsabaugh, rather than the petitioner, was responsible for all the financial matters of the corporation.

8. Petitioner stated that "just because I'm president of the corporation doesn't necessarily mean I know everything that's going on."

9. The Internal Revenue Service held petitioner personally liable for a penalty equal to the entire Federal withholding tax deficiency of Computer Systems for periods substantially similar to those at issue herein. However,

petitioner alleged that after payment of approximately 40 percent of the Federal deficiency, the remaining balance due was cancelled. He speculated that such partial cancellation may have been attributable to payments received from Mr. Sinsabaugh.

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 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."

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 the aforementioned subdivisions (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 cannot escape liability by delegating the responsibility for collection and payment of withholding taxes to a subordinate. Furthermore, he has failed to sustain his burden of proof, imposed pursuant to section 689(e) of the Tax Law and section T46-189.0(e) of the Administrative Code of the City of New York, to show that Computer Systems ceased business operations prior to December 31, 1980. Accordingly, petitioner was a person who willfully failed to collect, truthfully account for and pay over the New York State and City withholding taxes of Computer


Systems for the periods at issue herein, and, as such, the penalties asserted herein are sustained for the entire period at issue.

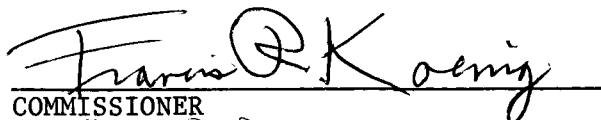
D. That the petition of Daniel S. Goodman is denied and the Notice of Deficiency issued July 25, 1983 is sustained.

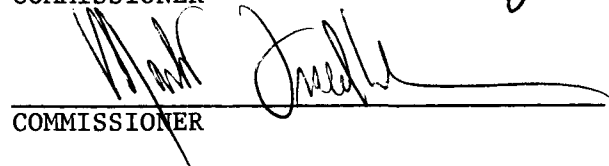
DATED: Albany, New York

STATE TAX COMMISSION

NOV 07 1985


PRESIDENT


COMMISSIONER


COMMISSIONER