

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Mac Katz :
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 1976 and 1977. :

AFFIDAVIT OF MAILING

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 15th day of April, 1985, he served the within notice of Decision by certified mail upon Mac Katz, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mac Katz
1530 Palisade Ave., Apt. 15N
Ft. Lee, NJ 07024

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
15th day of April, 1985.

David Parchuck

James R. Haglund

Authorized to administer oaths
pursuant to Tax Law section 174

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

April 15, 1985

Mac Katz
1530 Palisade Ave., Apt. 15N
Ft. Lee, NJ 07024

Dear Mr. Katz:

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: Petitioner's Representative
Stephen Krass
Krass, Keschner & Lund, P.C.
419 Park Ave. S.
New York, NY 10157
Taxing Bureau's Representative

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 15th day of April, 1985, he served the within notice of Decision by certified mail upon Stephen Krass, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Stephen Krass
Krass, Keschner & Lund, P.C.
419 Park Ave. S.
New York, NY 10157

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.

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of :
Mac Katz :

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 :
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STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
MAC KATZ	:	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 Years 1976 and 1977.	:	

Petitioner, Mac Katz, 1530 Palisade Avenue, Apt. 15N, Fort Lee, New Jersey 07024, 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 1976 and 1977 (File Nos. 32400 and 32475).

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 3, 1984 at 9:15 A.M. Petitioner appeared by Stephen J. Krass, Esq. The Audit Division appeared by John P. Dugan, Esq. (Irwin Levy, Esq., of counsel).

ISSUE

Whether petitioner, Mac Katz, 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 Bright Paper Box Co., Inc. for the years 1976 and 1977.

FINDINGS OF FACT

1. Bright Paper Box Co., Inc. (hereinafter "the corporation"), 1819 Flushing Avenue, Brooklyn, New York 11237, failed to pay over New York State and New York City personal income taxes withheld from the wages of its employees for periods as follows:

<u>WITHHOLDING TAX PERIOD</u>	<u>AMOUNT</u>
December 1, 1976 through December 31, 1976	\$ 430.90
January 1, 1977 through December 31, 1977	\$2,473.65

2. Pursuant to two (2) Accounts Receivable System computer printouts, the aforestated amount due for December, 1976 was solely with respect to unpaid New York State taxes. The aforestated amount due for the full taxable year 1977 was comprised of \$1,892.40 due for unpaid New York State taxes and \$581.25 due for unpaid New York City taxes.

3. On January 28, 1980, the Audit Division issued a Statement of Deficiency in conjunction with a Notice of Deficiency against Mac Katz (hereinafter "petitioner") wherein a penalty was asserted pursuant to section 685(g) of the Tax Law for an amount equal to the New York State withholding taxes due from the corporation for the period December 1, 1976 through December 31, 1976.

4. On July 28, 1980, the Audit Division issued a Statement of Deficiency in conjunction with a Notice of Deficiency against 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 calendar year 1977. Such penalties were asserted for both periods at issue 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.

5. During the periods at issue herein petitioner was Vice President of the corporation. Alex Goodman was the President. Petitioner and Mr. Goodman each owned fifty percent of the corporate stock.

6. Both petitioner and Mr. Goodman were authorized signatories to the corporation's checking account. All corporate checks required the signature of each man.

7. Petitioner claimed that his duties and responsibilities encompassed outside sales and client entertainment exclusively. Mr. Goodman, he argued, was responsible for all the managerial and financial aspects of the business.

8. Petitioner contended that he was not a person responsible for the collection and payment of the withholding taxes at issue; however, no documentary evidence was offered in support of such contention.

9. The corporation is no longer in business. Since its inception in or about 1965, petitioner did, on occasion, sign corporate tax returns, prepare payroll records and prepare payroll checks.

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."

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 Mac Katz 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 required to collect, truthfully account for and pay over the New York State and City withholding taxes of the corporation for the periods at issue herein, who willfully failed to do so. 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.

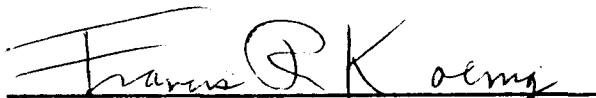
D. That the petition of Mac Katz is denied and the two notices of deficiency dated January 28, 1980 and July 28, 1980 are sustained.

DATED: Albany, New York

STATE TAX COMMISSION

APR 15 1985


PRESIDENT


COMMISSIONER


COMMISSIONER