

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Ismael Merchant :

: 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 1977. :

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 23rd day of May, 1985, he served the within notice of decision by certified mail upon Ismael Merchant, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Ismael Merchant
c/o Merchant Ivory Productions Ltd.
250 West 57th Street
New York, NY 10019

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
23rd day of May, 1985.

David Parchuck

Bernard A. Haglund
Authorized to administer oaths
pursuant to Tax Law section 174

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

May 23, 1985

Ismael Merchant
c/o Merchant Ivory Productions Ltd.
250 West 57th Street
New York, NY 10019

Dear Mr. Merchant:

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: Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
James F. Ivory :

: 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 1977. :

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 23rd day of May, 1985, he served the within notice of decision by certified mail upon James F. Ivory, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

James F. Ivory
c/o Merchant Ivory Productions Ltd.
250 West 57th St.
New York, NY 10019

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
23rd day of May, 1985.

David Parchuck

Annunzio Arduelli
Authorized to administer oaths
pursuant to Tax Law section 174

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

May 23, 1985

James F. Ivory
c/o Merchant Ivory Productions Ltd.
250 West 57th St.
New York, NY 10019

Dear Mr. Ivory:

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.

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Very truly yours,

STATE TAX COMMISSION

cc: Taxing Bureau's Representative

STATE TAX COMMISSION

In the Matter of the Petition :
:
of :
:
JAMES F. IVORY :
:
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 1977. :

A consolidated 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 9:15 A.M., with all briefs to be submitted by December 2, 1984. Petitioners appeared by T.P. O'Connor, Jr.,

CPA. The Audit Division appeared by John P. Dugan, Esq. (Angelo Scopellito, Esq., of counsel).

ISSUE

Whether the New York State and New York City withholding taxes purportedly due from Merchant Ivory Productions Ltd. for the year 1977 had been previously paid, thereby negating the penalties asserted against petitioners, Ismael Merchant and James F. Ivory 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.

FINDINGS OF FACT

1. The Audit Division alleged that Merchant Ivory Productions Ltd. (hereinafter "the corporation"), 21 East 40th Street, c/o Siegel, New York, New York 10016, failed to pay over \$1,875.37 in New York State personal income taxes and \$599.20 in New York City personal income taxes withheld from the wages of its employees for the full calendar year 1977.

2. On September 27, 1982, the Audit Division issued a Statement of Deficiency in conjunction with a Notice of Deficiency against petitioner Ismael Merchant 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 allegedly due from the corporation for said year. 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. A similar set of documents was issued against petitioner James F. Ivory under the same date. The deficiency asserted therein and the Audit Division's grounds for asserting such deficiency were identical to those of petitioner Ismael Merchant.

3. During the year at issue the corporation was engaged in the business activity of producing motion pictures. The petitioners herein were the only officers of the corporation. James F. Ivory was President and Ismael Merchant was Vice President.

4. Petitioners did not claim that they were not persons responsible for the collection and payment of said taxes, rather, they contended that the taxes at issue were previously paid by the corporation or through a separate corporation which was established for a film in production during the year at issue.

5. On the Reconciliation of Tax Withheld which was filed by the corporation for the year 1977, it reported that it had withheld \$1,875.37 in New York State tax and \$599.20 in New York City tax for a total of \$2,474.57.

6. An Accounts Receivable System computer printout for the account of the corporation indicates that \$2,474.57 was withheld during 1977 and that no payments were made.

7. Petitioners did not personally appear at the hearing held herein.

8. No evidence, documentary or otherwise, was submitted during the hearing. Although petitioners' representative was granted a period of two (2) months subsequent to the hearing within which to submit documentation in support of his contention that the withholding taxes at issue were paid, no such documentation was forthcoming.

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."

Section T46-185.0(g) of the Administrative Code of the City of New York contains a similar provision with respect to New York City taxes.

B. That petitioners, Ismael Merchant and James F. Ivory, failed to sustain their 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 the withholding taxes at issue had been previously paid.

C. That petitioners, Ismael Merchant and James F. Ivory, were persons who were required to collect, truthfully account for and pay over the 1977 New York State and City withholding taxes of Merchant Ivory Productions Ltd. who willfully failed to do so. Accordingly, said penalties asserted against them are hereby sustained.


D. That the petition of Ismael Merchant is denied and the Notice of Deficiency issued against him on September 27, 1982 is sustained.

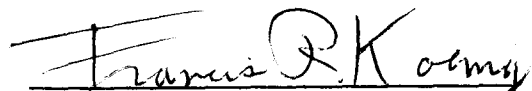
E. That the petition of James F. Ivory is denied and the Notice of Deficiency issued against him on September 27, 1982 is sustained.


DATED: Albany, New York

STATE TAX COMMISSION

MAY 23 1985


PRESIDENT


COMMISSIONER


COMMISSIONER