

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of

Marko Neuman

:

:

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or for Refund :
of NYS Personal Income Tax under Article 22 of the :
Tax Law and NYC Personal Income Tax under Chapter :
46, Title T of the Administrative Code of the City :
of New York for the Years 1977 and 1979. :

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 6th day of February, 1985, he served the within notice of Decision by certified mail upon Marko Neuman, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Marko Neuman
225-08 59th Ave.
Bayside, NY 11364

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
6th day of February, 1985.

David Parchuck

Annunzio R. Hagelund

Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

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of

Marko Neuman

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Tax Law and NYC Personal Income Tax under Chapter :
46, Title T of the Administrative Code of the City :
of New York for the Years 1977 and 1979. :

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 6th day of February, 1985, he served the within notice of Decision by certified mail upon H. Stuart Kloppe, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

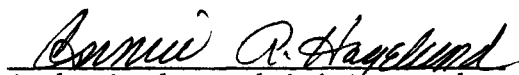
H. Stuart Kloppe
170 Old Country Rd.
Mineola, NY 11501

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.

Sworn to before me this
6th day of February, 1985.




Authorized to administer oaths
pursuant to Tax Law section 174

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

February 6, 1985

Marko Neuman
225-08 59th Ave.
Bayside, NY 11364

Dear Mr. Neuman:

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
H. Stuart Kloppe
170 Old Country Rd.
Mineola, NY 11501
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
MARKO NEUMAN	:	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 1977 and 1979.	:	

Petitioner, Marko Neuman, 225-08 59th Avenue, Bayside, New York 11364, 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 1977 and 1979 (File No. 37396).

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 June 12, 1984 at 10:45 A.M., with all briefs to be submitted by June 26, 1984. Petitioner appeared by H. Stuart Kloppe, Esq. The Audit Division appeared by John P. Dugan, Esq. (Angelo Scopellito, Esq., of counsel).

ISSUES

I. Whether petitioner, Marko Neuman, 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 Quentin Kane Supermarket, Inc. for the years 1977 and 1979. .

II. Whether the 1977 withholding taxes at issue had been previously paid.

FINDINGS OF FACT

1. Quentin Kane Supermarket, Inc. (hereinafter "Quentin Kane"), 3024 Quentin Road, Brooklyn, New York 11234, failed to pay over the New York State and New York City personal income taxes withheld from the wages of its employees for the periods and in the amounts as follows:

<u>Period</u>	<u>Amount</u>
December 1, 1977 through December 31, 1977	\$ 493.66
January 1, 1979 through February 28, 1979	561.35
May 1, 1979 through December 31, 1979	<u>1,994.86</u>
Total Amount Due	<u>\$3,049.87</u>

2. On January 25, 1982, the Audit Division issued a Statement of Deficiency in conjunction with a Notice of Deficiency against petitioner, Marko Neuman, 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 Quentin Kane for the aforesated periods. Such penalties were asserted on the grounds that Marko Neuman (hereinafter "petitioner") was a person required to collect, truthfully account for and pay over said taxes and that he willfully failed to do so.

3. The portion of the deficiency asserted with respect to the period May 1, 1979 through December 31, 1979 was abated at a pre-hearing conference. Said abatement of \$1,994.86 was made on the basis that petitioner had established that he resigned "as secretary and a member of the Board of Directors" of Quentin Kane effective March 2, 1979 and that he sold his stock in Quentin Kane on March 9, 1979. Accordingly, the remaining deficiency at issue herein is \$1,055.01.

4. Petitioner alleged in his perfected petition that:

"Determination for deficiency for 1977 was and is erroneous for the reason that final tax in the amount of \$462.20 was

paid by check issued January 1978, which cleared the bank in February 1978."

5. Martin Liss, CPA, the accountant for Quentin Kane since its inception in 1977, testified that his records indicate that \$462.20 was paid toward the deficiency asserted for the period December 1, 1977 through December 31, 1977. In support of said claim petitioner submitted what were purported to be Mr. Liss' general ledger sheets for Quentin Kane for New York State and New York City withholding taxes, together with a handwritten bank reconciliation of Quentin Kane dated January 31, 1978. Said general ledger sheets, which were designated "1977", list, inter alia, amounts of \$358.10 and \$104.10 for the date "1/31". Petitioner alleged that said amounts represent checks issued in payment of New York State and New York City withholding taxes for the period December 1, 1977 through December 31, 1977 respectively.

6. A memorandum dated February 2, 1984 from the Assessment Review Unit of the Audit Division states, with respect to Quentin Kane and petitioner, that:

"Withholding Tax has no record of any payment towards the assessment for withholding tax."

7. An undated accounts receivable system computer printout for the account of Quentin Kane shows that for the period December 1, 1977 through December 31, 1977, the original combined New York State and New York City withholding tax due was \$500.70. This amount was reduced by a payment of \$7.04 made November 16, 1979 resulting in the deficiency at issue for said period of \$493.66.

8. An updated accounts receivable system computer printout dated October 18, 1984 for the account of Quentin Kane shows that for the period December 1, 1977 through December 31, 1977, an additional payment of \$225.94 was made on February 15, 1984.

9. Both petitioner and his daughter, Suzanne Semensohn, who was employed as the bookkeeper of Quentin Kane during the periods at issue, rendered testimony to the effect that:

- a. Mr. Steven Vasilikos was President of Quentin Kane, and as such, ran the day-to-day operation of the business.
- b. Petitioner's relationship with Quentin Kane was that of an investor.
- c. Petitioner was removed as an authorized signatory from the corporation's checking account one or two months after the business commenced and that from that point on, Mr. Vasilikos was the only authorized signatory.
- d. Petitioner had no active participation in the operation of the business.

10. Suzanne Semensohn worked at the business premises of Quentin Kane on weekends only.

11. Petitioner further testified that:

- a. He visited the business premises of Quentin Kane about four or five times in total just to look over the store and check on the stock.
- b. He was not a director of Quentin Kane.
- c. He was employed full time by an unrelated business during the periods at issue.

12. During the periods December 1, 1977 through December 31, 1977 and January 1, 1979 through February 28, 1979, petitioner owned five (5) shares of Quentin Kane stock. Said shares represented one third of the outstanding stock.

13. Petitioner's 1979 Federal Schedule D shows that he disposed of his shares in Quentin Kane in May, 1979 and that his cost on acquiring said shares on September 30, 1977 was \$17,359.19.

14. Petitioner submitted copies of his wage and tax statements from "3 Sevens Food Corp.", 77 Seventh Avenue, New York, New York 10011. Said statements

show that petitioner received wage income from said corporation of \$12,200.00 (1977), \$16,400.00 (1978) and \$15,200.00 (1979).

15. Petitioner received a salary from Quentin Kane of \$200.00 per week until the later part of 1978, at which time his salary was terminated because "the business was very bad."

CONCLUSIONS OF LAW

A. That sections 685(g) of the Tax Law and T46-185.0(g) of the Administrative Code of the City of New York provide that:

"Any person required to collect, truthfully account for, and pay over the tax imposed by this (article/part) 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."

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 Marko Neuman 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 the New York State and City withholding taxes of Quentin Kane for the periods 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 deficiency of \$493.66, asserted for the period December 1, 1977 through December 31, 1977, is reduced by the February 15, 1984 payment of \$225.94 to a revised amount due for said period of \$267.72.

E. That the petition of Marko Neuman is granted to the extent provided in Conclusion of Law "D" supra, and except as so granted, said petition is, in all other respects, denied.

F. That the Audit Division is hereby directed to reduce the Notice of Deficiency issued January 25, 1982 to \$829.07 computed as follows:

<u>Period</u>	<u>Amount</u>
December 1, 1977 through December 31, 1977	\$267.72
January 1, 1979 through February 28, 1979	561.35
May 1, 1979 through December 31, 1979	-0-
Total Amount Due	<u>\$829.07</u>

DATED: Albany, New York

STATE TAX COMMISSION

FEB 06 1985

Richard A. Clem
PRESIDENT

James R. Koenig
COMMISSIONER

Mark D. Smith
COMMISSIONER

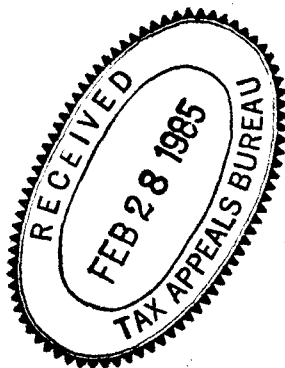
STATE OF NEW YORK
State Tax Commission
TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N. Y. 12227

STATE CAMPUS

ALBANY, N. Y. 12227

22

MarRo Neuman
225-08 59th Ave,
Bayside, NY, N364



CERTIFIED

E45 69T E69 D

MAIL

REQUEST FOR BETTER ADDRESS

Requester Tax Appeals Bureau Room 107 - Bldg. #9 State Campus Albany, New York 12227	Unit Tax Appeals Bureau Room 107 - Bldg. #9 State Campus Albany, New York 12227	Date of Request 2/28/85
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Please find most recent address of taxpayer described below; return to person named above.

Social Security Number	Date of Petition S.C. - Dec. - 2/6/85
Name Marko Newman	
Address 225 - 08 59th Ave. Bayside, N. Y. 11364	

Results of search by Files

<input type="checkbox"/> New address:	
<input type="checkbox"/> Same as above, no better address	
<input checked="" type="checkbox"/> Other:	Unclaimed

Searched by DP	Section	Date of Search 2/28/85
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PERMANENT RECORDFOR INSERTION IN TAXPAYER'S FOLDER

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

February 6, 1985

Marko Neuman
225-08 59th Ave.
Bayside, NY 11364

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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
H. Stuart Klopfer
170 Old Country Rd.
Mineola, NY 11501
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
MARKO NEUMAN	:	DECISION
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Refund of New York State Personal Income Tax	:	
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DATED: Albany, New York

STATE TAX COMMISSION

FEB 06 1985

Rodriguez as Com
PRESIDENT

Francis R. Koenig
COMMISSIONER

[Signature]
COMMISSIONER