

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
Sumner Rosenthal

:

: AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision
of a Determination or Refund of Personal Income
Tax under Article 22 of the Tax Law for the
Years 1979 - 1981.

:

:

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

Sumner Rosenthal
185 East 85th Street
New York, NY 10028

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 February, 1985.

David Parchuck

Samuel A. Hagelund
Authorized to administer oaths
pursuant to Tax Law section 174

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

February 15, 1985

Sumner Rosenthal
185 East 85th Street
New York, NY 10028

Dear Mr. Rosenthal:

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	:	
	:	
SUMNER ROSENTHAL	:	DECISION
	:	
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law and Chapter 46, Title T of the	:	
Administrative Code of the City of New York for	:	
the Period March 1, 1979 through January 15,	:	
1981.	:	

Petitioner, Sumner Rosenthal, 185 East 85th Street, New York, New York 10028, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law and Chapter 46, Title T of the Administrative Code of the City of New York for the period March 1, 1979 through January 15, 1981 (File No. 42185).

A formal hearing was held before Daniel J. Ranalli, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on September 18, 1984 at 9:15 A.M., with additional evidence to be submitted by November 19, 1984. Petitioner appeared pro se. The Audit Division appeared by John P. Dugan, Esq. (Angelo A. Scopellito, Esq., of counsel).

ISSUE

Whether petitioner, as a person required to collect, truthfully account for and pay over withholding taxes of Westminster Toiletries, Inc. and Merchandising Enterprises, Ltd., willfully failed to do so and is thus liable to a penalty under section 685(g) of the Tax Law.

FINDINGS OF FACT

1. On November 29, 1982, the Audit Division issued a Notice of Deficiency, along with a Statement of Deficiency, asserting a penalty pursuant to section 685(g) of the Tax Law against petitioner, Sumner Rosenthal, as a person required to collect, truthfully account for and pay over withholding taxes of Westminster Toiletries, Inc. ("Westminster") and Merchandising Enterprises, Ltd. ("Merchandising") in the amount of \$12,203.09 for the period March 1, 1979 through January 15, 1981.

2. Petitioner was the president of both Westminster and Merchandising. He conceded that he was a person required to collect and pay over the withholding taxes of both corporations during the period in issue.

3. Petitioner's Reconciliation of Tax Withheld (Form IT-2103) for tax year 1979 indicated total payments for that year of \$762.45. The Department of Taxation and Finance accounts receivable system indicates payment of \$42.95 for the tax year 1981. The payments for both of these years were taken into account in computing the deficiency issued against petitioner.

4. Petitioner maintained that he made numerous remittances of withholding taxes during the years in issue; however, since his corporations went into bankruptcy, he was unable to produce any checks or other record of payment other than those mentioned supra. Petitioner requested a reasonable amount of time following the hearing to make a thorough check of his records for any proof of payment. His request was granted; however, he was unable to produce any further evidence that the taxes due had been paid.

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 personal income tax, 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 Chapter 46, Title T of the Administrative Code of the City of New York contains a similar provision.


B. That petitioner has failed to meet his burden of proof as provided under section 689(e) of the Tax Law to show that the deficiency was erroneous. A search of petitioner's records and a search of Audit Division records have failed to show any withholding tax payments for the period in issue other than those mentioned in Finding of Fact "3", supra. Therefore, the deficiency must be sustained.

C. That the petition of Sumner Rosenthal is denied and the Notice of Deficiency issued November 29, 1982 is sustained.

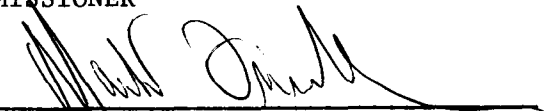
DATED: Albany, New York

STATE TAX COMMISSION

FEB 15 1985


PRESIDENT


COMMISSIONER


COMMISSIONER