

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
Peter M. Sandor

:

: AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Personal Income :
& NYC Tax under Article 22 & 30 of the Tax Law :
for the Year 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 Peter M. Sandor, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Peter M. Sandor
260 N. Hewlett Ave.
Merrick, NY 11566

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

Bennie D. Haglund

Authorized to administer oaths
pursuant to Tax Law section 174

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

February 15, 1985

Peter M. Sandor
260 N. Hewlett Ave.
Merrick, NY 11566

Dear Mr. Sandor:

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	:	
	:	
PETER M. SANDOR	:	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 Year 1981.	:	

Petitioner, Peter M. Sandor, 260 North Hewlett Avenue, Merrick, New York 11566, 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 year 1981 (File No. 42600).

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 1:15 P.M. Petitioner appeared pro se. The Audit Division appeared by John P. Dugan, Esq. (Angelo Scopellito, Esq., of counsel).

ISSUE

Whether petitioner, Peter M. Sandor, 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 Jefferson Screw & Bolt Industries, Inc. for the year 1981.

FINDINGS OF FACT

1. Jefferson Screw & Bolt Industries, Inc. (hereinafter "Jefferson"), 267 Broadway, 3rd Floor, New York, New York 10007, failed to pay over \$954.45 in New York State personal income taxes and \$223.25 in New York City personal income taxes withheld from the wages of its employees for the period July 1, 1981 through September 15, 1981.

2. On November 29, 1982, the Audit Division issued a Statement of Deficiency in conjunction with a Notice of Deficiency against Peter M. Sandor (hereinafter "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 New York State and City withholding taxes due from Jefferson for said period. 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.

3. Prior to and during the period at issue, petitioner held the office of Vice President, Finance with Jefferson. As such, he was responsible for the areas of accounting, financial analysis and data processing. His responsibilities in the area of accounting included general accounting and financial statement preparation, accounts payable processing, accounts receivable processing and payroll processing. In the area of financial analysis, his responsibilities included budgeting and forecasting.

4. Petitioner was not a stockholder or director of Jefferson. His compensation was approximately \$50,000.00 per annum.

5. Petitioner contended that during his association with Jefferson he had no discretion or authority to initiate, authorize, approve or direct the disbursement of funds to any vendor, taxing authority or individual. He

claimed that all disbursements of funds were at the instruction and direction of the President of Jefferson, Mr. Jack Shor.

6. Petitioner was aware that the New York State and City withholding taxes for the period at issue were not paid over to said jurisdictions. He claimed that although he informed Mr. Shor of the delinquent status of payables to said taxing authorities, he was subject to Mr. Shor's instructions as to how company funds were to be disbursed.

7. Through March 18, 1981, petitioner was not a signatory for either Jefferson's operating or payroll checking accounts. As of March 19, 1981, Jefferson operated as a debtor in possession and new corporate resolutions were drawn. At this time, petitioner became one of four signatories for Jefferson's operating account; however, two signatures were required on each check drawn on said account. Petitioner alleged that Jack Shor and his wife, Dina Shor, were the only signatories for Jefferson's payroll account.

8. All of the semi-monthly returns of tax withheld, which were filed during the period at issue, were signed by Jack Shor as President.

9. Petitioner submitted affidavits from three former employees of Jefferson. In each affidavit, it was claimed that petitioner was under the direction and control of Mr. Shor and that he had no independent authority to disburse funds without the specific instruction of Mr. Shor. However, according to said affidavits, two of the three former employees terminated their employment with Jefferson prior to or during the first part of the period at issue herein.

10. Petitioner submitted a statement from the Internal Revenue Service wherein it was stated that for the quarters ended June 30, 1980, September 30, 1980, December 31, 1980 and the short period from January 1, 1981 to March 18,

1981, petitioner was not held as a person responsible for the collection and payment of Federal withholding taxes.

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 the purposes of subdivision (g), the term person:

"includes 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."

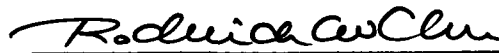
C. That petitioner, Peter M. Sandor, has failed to sustain his burden of proof, imposed pursuant to sections 689(e) of the Tax Law and T46-189.0(e) of the Administrative Code of the City of New York, to show that he was not a person responsible for the collection and payment of the New York State and City withholding taxes of Jefferson for the period at issue herein, and that he did not willfully fail to fulfill these responsibilities.

D. That the petition of Peter M. Sandor is denied and the Notice of Deficiency issued November 29, 1982 is sustained.

DATED: Albany, New York

FEB 15 1985

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER