

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Norman P. Landas :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Personal Income Tax
under Article(s) 22 of the Tax Law :
for the Period 1/1/81-6/30/82.

State of New York :

ss.:

County of Albany :

David Parchuck/Connie Hagelund, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 27th day of March, 1986, he/she served the within notice of decision by certified mail upon Norman P. Landas the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Norman P. Landas
67-31 161st St.
Flushing, NY 11365

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
27th day of March, 1986.

David Parchuck

Janet M Smay
Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

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of

Norman P. Landas : AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :
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under Article(s) 22 of the Tax Law :
for the Period 1/1/81-6/30/82.

State of New York :

ss.:

County of Albany :

David Parchuck/Connie Hagelund, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 27th day of March, 1986, he/she served the within notice of decision by certified mail upon Gerald M. Hertz, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Gerald M. Hertz
Moldover, Hertz, Presnick & Gidaly
750 Third Ave.
New York, NY 10017

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
27th day of March, 1986.

David Parchuck

Janet M. Smay
Authorized to administer oaths
pursuant to Tax Law section 174

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

March 27, 1986

Norman P. Landas
67-31 161st St.
Flushing, NY 11365

Dear Mr. Landas:

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 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

Petitioner's Representative:
Gerald M. Hertz
Moldover, Hertz, Presnick & Gidaly
750 Third Ave.
New York, NY 10017

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
NORMAN P. LANDAS	:	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 Periods January 1, 1981	:	
through December 31, 1981 and June 1, 1982	:	
through June 30, 1982.	:	

Petitioner, Norman P. Landas, 67-31 161st Street, Flushing, New York 11365, 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 periods January 1, 1981 through December 31, 1981 and June 1, 1982 through June 30, 1982 (File No. 50092).

A hearing was held before James Hoefer, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on September 11, 1985 at 1:15 P.M. Petitioner appeared by Moldover, Hertz, Presnick & Gidaly (Gerald M. Hertz, Esq., of counsel). The Audit Division appeared by John P. Dugan, Esq. (Irwin Levy, Esq., of counsel).

ISSUE

Whether petitioner was a person who willfully failed to collect, truthfully account for and pay over the New York State and New York City withholding taxes of Commercial Business Systems, Inc. and therefore subject to penalty equal in amount to the unpaid withholding taxes due and owing from said corporation.

FINDINGS OF FACT

1. On October 24, 1983, the Audit Division issued a Statement of Deficiency to petitioner as "Norman P. Landis" (sic), asserting that he was a person required to collect, truthfully account for and pay over the New York State and City withholding taxes of Commercial Business Systems, Inc. (hereinafter "Commercial") for the periods January 1, 1981 through December 31, 1981 and June 1, 1982 through June 30, 1982. The aforementioned Statement further alleged that petitioner willfully failed to collect, truthfully account for and pay over said withholding taxes and that he was therefore subject to a penalty equal in amount to the unpaid withholding taxes of \$1,227.66. Accordingly, on October 24, 1983, the Audit Division issued a Notice of Deficiency to petitioner for the years 1981 and 1982 asserting a deficiency of \$1,227.66.

2. On September 1, 1981, petitioner, James A. Bronstein and Walter Boxer entered into an agreement with Commercial wherein all three individuals were elected directors and officers of the corporation. Mr. Bronstein was elected President of Commercial, while petitioner held the title of Vice-President and Mr. Boxer the title of Secretary-Treasurer. Both Bronstein and Boxer were forty percent (40%) shareholders in Commercial, while petitioner owned the remaining twenty percent (20%) of its outstanding stock. Prior to September 1, 1981, petitioner was neither an officer nor employee of Commercial.

3. Prior to his becoming Vice-President of Commercial, petitioner was employed by the 3M Corporation as a service technician primarily involved in the servicing and repairing of photocopy equipment. Petitioner performed essentially the same services for Commercial and spent the major portion of his day in the field repairing and servicing the equipment sold by Commercial.

Mr. Landas would visit Commercial's offices on the average of only one day per week.

4. All checks issued by Commercial had to be co-signed by either Mr. Boxer and Mr. Bronstein or Mr. Boxer and petitioner. Since petitioner did not visit Commercial's offices on a regular and frequent basis, he would pre-sign as many as thirty (30) blank checks. Petitioner was not involved in the determination of which creditors were to be paid, nor did he ever sign any tax returns on behalf of the corporation. Mr. Landas' responsibilities did not include the collection and/or payment of withholding taxes.

5. Petitioner was unaware that New York State and City withholding taxes were not being remitted to the Audit Division. Mr. Landas first learned of the details of Commercial's indebtedness when he saw the bankruptcy petition filed by Commercial sometime in October of 1982. Petitioner devoted all his time and effort to Commercial's business and the wage income received from Commercial was his sole source of income.

CONCLUSIONS OF LAW

A. That petitioner was not a person required to collect, truthfully account for and pay over the New York State and City withholding taxes of Commercial. Mr. Landas was the service and repair technician for Commercial and he spent almost all his time in the field repairing and servicing equipment. Although petitioner had authority to and, in fact, did sign corporate checks, it must be noted that he signed only blank checks. Petitioner did not determine which creditors were to be paid, did not sign tax returns and was not responsible for the collection and/or payment of withholding taxes.

B. That the petition of Norman P. Landas is granted and the Notice of Deficiency dated October 24, 1983 is hereby cancelled.

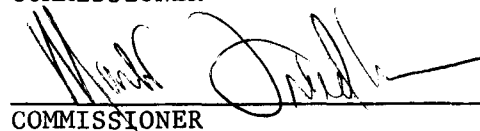
DATED: Albany, New York

STATE TAX COMMISSION

MAR 27 1986


PRESIDENT


COMMISSIONER


COMMISSIONER