

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of

Sondra Wilson

:

: AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :
of a Determination or Refund of NYS 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, 1978 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 3rd day of January, 1986, he served the within notice of Decision by certified mail upon Sondra Wilson, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Sondra Wilson
69-10 108th Street
Forest Hills, NY 11375

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
3rd day of January, 1986.

David Parchuck

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

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of

Sondra Wilson

:

:

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :
of a Determination or Refund of NYS 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 - 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 3rd day of January, 1986, he served the within notice of Decision by certified mail upon C. H. Leshkowitz, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

C. H. Leshkowitz
Leshkowitz & Co.
122 E. 42nd St., Rm. 500
New York, NY 10168

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
3rd day of January, 1986.

David Parchuck

Bernie O'Hagan

Authorized to administer oaths
pursuant to Tax Law section 174

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

January 3, 1986

Sondra Wilson
69-10 108th Street
Forest Hills, NY 11375

Dear Ms. Wilson:

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
C. H. Leshkowitz
Leshkowitz & Co.
122 E. 42nd St., Rm. 500
New York, NY 10168
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
SONDRA WILSON	:	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, 1978 and 1979.	:	

Petitioner, Sondra Wilson. 69-10 108th Street, Forest Hills, New York 11375, 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, 1978 and 1979 (File No. 45439).

On July 18, 1985, petitioner advised the State Tax Commission, in writing, that she desired to waive a hearing and to submit the case to the State Tax Commission upon the entire record contained in the file with submission of additional evidence and documents by August 24, 1985. After due consideration of said record, the Commission renders the following decision.

ISSUES

I. Whether petitioner, Sondra Wilson, 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 Isramkar Ltd. for the years 1977, 1978 and 1979.

II. Whether the Notice of Deficiency was barred by the expiration of the period of limitations on assessment.

FINDINGS OF FACT

1. Isramkar Ltd., 350 5th Avenue, New York, New York 10001, failed to pay over the New York State and New York City personal income taxes withheld from the wages of its employees for the following periods:

<u>Withholding Tax Period</u>	<u>Amount</u>
July 1, 1977 through December 31, 1977	\$ 4,965.05
January 1, 1978 through December 31, 1978	7,058.22
January 1, 1979 through December 31, 1979	7,368.34
TOTAL	<u>\$19,391.61</u>

2. On April 25, 1983, the Audit division issued a Statement of Deficiency in conjunction with a Notice of Deficiency against Sondra Wilson (hereinafter "petitioner") wherein penalties were asserted 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 for amounts equal to the total New York State and New York City withholding taxes due from Isramkar Ltd. for the aforestated periods. Said penalties were asserted on the grounds that petitioner was a person required to collect, truthfully account for and pay over the withholding taxes at issue, and that she willfully failed to do so.

3. Petitioner filed a petition on July 11, 1983 wherein her grounds claimed for relief were listed as follows:

"(1) The taxpayer is not a "person" required to collect and pay over withholding taxes for ISRAMKAR LTD. (the corporation) as defined in Section 685(N) (sic) of the Tax Law.

(2) The taxpayer was neither an officer, stockholder or director of the corporation and she was never an employee of the corporation.

(3) The taxpayer had no authorization to sign checks of the corporation.

(4) The assessment for all periods is barred by the Statute of Limitations."

4. The Corporation Franchise Tax Report filed by Isramkar Ltd. for the fiscal year ended October 31, 1977 shows that petitioner held the title of President. Said report further shows that she received no salary or compensation from the corporation during said fiscal year.

5. Withholding Tax Section Accounts Receivable System computer printouts show that Isramkar Ltd. filed returns for the periods at issue on the following dates:

<u>Period</u>	<u>Date Return Filed</u>
July 1, 1977 through December 31, 1977	June 12, 1979
January 1, 1978 through December 31, 1978	May 28, 1980
January 1, 1979 through December 31, 1979	April 6, 1981

6. No evidence was submitted on petitioner's behalf. Accordingly, the decision rendered herein has been made based on the entire record contained in the file on the date petitioner so advised the State Tax Commission of her desire to waive the hearing.

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."

For New York City purposes, section T46-185.0(g) of the Administrative Code of the City of New York contains a similar provision.

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 Sondra Wilson has failed to sustain her 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 she was not a person responsible for the collection and payment of the New York State and City withholding taxes of Isramkar Ltd. for the periods at issue herein. Accordingly, petitioner is liable for the penalties imposed under section 685(g) of the Tax Law and section T46-185.0(g) of the Administrative Code of the City of New York.

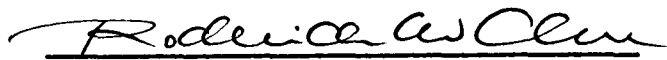
D. That the penalty for failure to pay withholding taxes under section 685(g) of the Tax Law is wholly distinct from any limitation on assessment under section 683. "It follows then that the penalty imposed against petitioner as a corporate officer is entirely distinct from an...assessment against the corporation. As a separate statutory liability, it need not be assessed within any particular period after the corporate assessment is made (citations omitted)." Wolfstitch v. New York State Tax Commission, 106 A.D.2d 745. Accordingly, the Notice of Deficiency issued April 25, 1983 was timely.


E. That the petition of Sondra Wilson is denied and the Notice of Deficiency issued April 25, 1983 is sustained.

DATED: Albany, New York

STATE TAX COMMISSION

JAN 03 1986


PRESIDENT


COMMISSIONER


COMMISSIONER



STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, N.Y. 12227

PAUL B. COBURN
SECRETARY TO THE STATE TAX COMMISSION

March 3, 1986

C.H. Leshkowitz, Esq.
122 East 42nd Street
New York, New York 10017

Re: Petition of Sondra Wilson
TAB #45439

Dear Mr. Leshkowitz:

Please be advised that the State Tax Commission has granted your request to vacate its decision of January 3, 1986 and reconsider the case taking into consideration the affidavits referred to in your letter of January 9, 1986.

You will receive a new decision in the near future.

Very truly yours,

A handwritten signature in dark ink, appearing to be 'P. B. Coburn', written over a horizontal line.

PAUL B. COBURN
Secretary to the State
Tax Commission

cc: Law Bureau

PBC/par



STATE OF NEW YORK
STATE TAX COMMISSION

MEMORANDUM

AD-53.2(11/83)

TO: State Tax Commission

Secretary to the
OFFICE: State Tax Commission

FROM: Paul B. Coburn

DATE: February 10, 1986

SUBJECT: Petition of Sondra Wilson
Request to reconsider decision on submission,
in light of additional evidence

By letter dated January 9, 1986, C.H. Leshkowitz, the representative for Sondra Wilson, requested the State Tax Commission to reconsider its decision on submission (copy attached), to take account of certain affidavits.

The issue is whether Mrs. Wilson was a person responsible for the collection and payment of New York State and New York City withholding taxes on behalf of Isramkor Ltd. On July 18, 1985, at an informal meeting between Mr. Leshkowitz as petitioner's representative and Angelo Scopellito as the Audit Division's representative, it was agreed that the matter would be handled on submission and that three affidavits (of Mrs. Wilson; of her husband who was president of the corporation during the years 1977, 1978 and 1979; and of the attorney for the corporation) would be presented to establish petitioner was not a responsible person. The affidavits were mistakenly addressed to Room 5661 of Two World Trade Center, were never received by the hearing officer and consequently, were never considered in arriving at the decision. Please refer to Finding of Fact "6" where it is stated, "No evidence was submitted on petitioner's behalf."

I recommend that the Commission grant the request of petitioner's representative and that the decision be rewritten as appropriate in light of the additional evidence.

PAUL B. COBURN
Secretary to the State Tax Commission

Sondra Wilson

- 2 -

February 10, 1986

	<u>GRANT</u>	<u>DO NOT GRANT</u>
<u>Rodrick W. Allen</u> PRESIDENT	<u>✓ RW</u>	_____
<u>Francis Q. Kolmg</u> COMMISSIONER	<u>✓ F.K.</u>	_____
<u>Mark J. Smith</u> COMMISSIONER	<u>✓ MS</u>	_____



STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, N.Y. 12227

PAUL B. COBURN
SECRETARY TO THE STATE TAX COMMISSION

February 10, 1986

C.H. Leshkowitz, Esq.
122 East 42nd Street
New York, New York 10017

Re: Petition of Sondra Wilson

Dear Mr. Leshkowitz:

In your correspondence of January 9, 1986, you request that the State Tax Commission review the decision of January 3, 1986 in the above-named matter, because certain affidavits were submitted on petitioner's behalf but were never received and consequently never considered by the Commission.

I have submitted your request to the Commission and will advise you of its decision thereon as soon as rendered.

Sincerely,

A handwritten signature in dark ink, appearing to read "P. B. Coburn", with a long, sweeping horizontal line extending to the right.

PAUL B. COBURN
Secretary to the State
Tax Commission

PBC/par

cc: Angelo Scopellito, Esq.



STATE OF NEW YORK
STATE TAX COMMISSION

MEMORANDUM

AD-53.2(11/83)

TO: State Tax Commission

FROM: Paul B. Coburn

SUBJECT: Petition of Sondra Wilson
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in light of additional evidence

Secretary to the
OFFICE: State Tax Commission

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PAUL B. COBURN
Secretary to the State Tax Commission

Sondra Wilson

- 2 -

February 10, 1986

	<u>GRANT</u>	<u>DO NOT GRANT</u>
<u>PRESIDENT</u>	<u> </u>	<u> </u>
<u>COMMISSIONER</u>	<u> </u>	<u> </u>
<u>COMMISSIONER</u>	<u> </u>	<u> </u>

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
SONDRA WILSON	:	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, 1978 and 1979.	:	

Petitioner, Sondra Wilson. 69-10 108th Street, Forest Hills, New York 11375, 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, 1978 and 1979 (File No. 45439).

On July 18, 1985, petitioner advised the State Tax Commission, in writing, that she desired to waive a hearing and to submit the case to the State Tax Commission upon the entire record contained in the file with submission of additional evidence and documents by August 24, 1985. After due consideration of said record, the Commission renders the following decision.

ISSUES

I. Whether petitioner, Sondra Wilson, 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 Isramkar Ltd. for the years 1977, 1978 and 1979.

II. Whether the Notice of Deficiency was barred by the expiration of the period of limitations on assessment.

FINDINGS OF FACT

1. Isramkar Ltd., 350 5th Avenue, New York, New York 10001, failed to pay over the New York State and New York City personal income taxes withheld from the wages of its employees for the following periods:

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3. Petitioner filed a petition on July 11, 1983 wherein her grounds claimed for relief were listed as follows:

"(1) The taxpayer is not a "person" required to collect and pay over withholding taxes for ISRAMKAR LTD. (the corporation) as defined in Section 685(N) (sic) of the Tax Law.

(2) The taxpayer was neither an officer, stockholder or director of the corporation and she was never an employee of the corporation.

(3) The taxpayer had no authorization to sign checks of the corporation.

(4) The assessment for all periods is barred by the Statute of Limitations."

4. The Corporation Franchise Tax Report filed by Isramkar Ltd. for the fiscal year ended October 31, 1977 shows that petitioner held the title of President. Said report further shows that she received no salary or compensation from the corporation during said fiscal year.

5. Withholding Tax Section Accounts Receivable System computer printouts show that Isramkar Ltd. filed returns for the periods at issue on the following dates:

<u>Period</u>	<u>Date Return Filed</u>
July 1, 1977 through December 31, 1977	June 12, 1979
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6. No evidence was submitted on petitioner's behalf. Accordingly, the decision rendered herein has been made based on the entire record contained in the file on the date petitioner so advised the State Tax Commission of her desire to waive the hearing.

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."

For New York City purposes, section T46-185.0(g) of the Administrative Code of the City of New York contains a similar provision.

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 Sondra Wilson has failed to sustain her 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 she was not a person responsible for the collection and payment of the New York State and City withholding taxes of Isramkar Ltd. for the periods at issue herein. Accordingly, petitioner is liable for the penalties imposed under section 685(g) of the Tax Law and section T46-185.0(g) of the Administrative Code of the City of New York.

D. That the penalty for failure to pay withholding taxes under section 685(g) of the Tax Law is wholly distinct from any limitation on assessment under section 683. "It follows then that the penalty imposed against petitioner as a corporate officer is entirely distinct from an...assessment against the corporation. As a separate statutory liability, it need not be assessed within any particular period after the corporate assessment is made (citations omitted)." Wolfstitch v. New York State Tax Commission, 106 A.D.2d 745. Accordingly, the Notice of Deficiency issued April 25, 1983 was timely.

E. That the petition of Sondra Wilson is denied and the Notice of Deficiency issued April 25, 1983 is sustained.

DATED: Albany, New York

STATE TAX COMMISSION

JAN 03 1986


PRESIDENT


COMMISSIONER

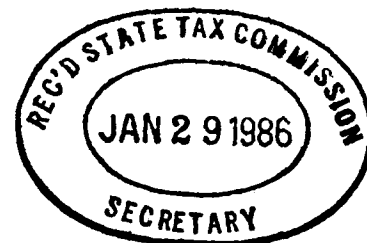

COMMISSIONER

C. H. LESHKOWITZ ATTORNEY AT LAW

122 EAST 42ND STREET, NEW YORK, N. Y. 10017

January 9, 1986

Mr. Paul B. Coburn
Bldg. 9
State Office Campus
Albany, NY 12227



Re: Sondra Wilson

Dear Mr. Coburn:

In accordance with my several conversations with Mr. Michael Alexander, Director of Litigation for the State of New York State Tax Commission, I am enclosing original copies of substantiation which I previously submitted directly to the state tax representative at the World Trade Center.

This matter related to an assessment made by the state tax commission against Sondra Wilson on the basis that she was an officer of Isramkor Ltd. for the periods 1977 through 1979. Isramkor went out of business leaving a liability for New York State and New York City withholding taxes in the amount of \$19,391.61, and the State Tax Commission assessed Sondra Wilson as an officer of such corporation. David Steinberg, the original attorney who filed a protest against this assessment died at the beginning of 1985 and this matter was transferred to me.

On July 18, 1985 I personally met with Mr. Angelo Scapolito at the World Trade Center, office of the State Tax Commission. Originally, the file indicates that this case had been assigned to a Mr. Caplowaith. In meeting with Mr. Scapolito, I discussed my knowledge of the facts in the case and advised him that it was my understanding that Mrs. Wilson was listed as an officer of the corporation only upon its incorporation, but that subsequent to such date she had resigned and had absolutely no part in its business affairs. I advised him that she had no power to sign checks, she did not hire or fire employees and in fact spent her time as a housewife raising her two children.

Mr. Scapolito agreed to accept affidavits from Mrs. Wilson attesting to the facts that I had presented and further agreed to accept an affidavit from Mrs. Wilson's husband and from the attorney for the corporation. At our meeting he requested that I sign a waiver of hearing before the State Tax Commission since it was the feeling that this matter could be resolved merely by the submission of documents.

Paul B. Coburn
January 9, 1986
Page 2

On September 9 Sondra Wilson executed an affidavit in support of our submission to cancel the subject assessment in the amount of \$19,391.61 based on a recitation of essentially the same facts outlined above. In addition Mr. Bertrum Zweibon, the original incorporating attorney and the attorney for the corporation, essentially corroborated the facts that Sondra Wilson had no involvement, active or otherwise, in the corporation. I submitted the two affidavits with my own covering letter addressed to the State Tax Commission. However, I note that my original letter was not addressed to the personal attention of Mr. Scapolito. In fact, I further note that the letter was addressed to Room 5661 instead of Room 6651, a transposition of numbers not caught in the original proofreading.

The commission's decision dated January 3, 1986 was mailed directly to me, I received it on January 6 and I immediately called the Tax Commission and talked to Mr. Alexander to express my amazement at this decision, particularly with paragraph 6 which states that "no evidence was submitted on petitioners behalf". Mr. Alexander was kind enough to investigate this matter and inform me that in fact the Commission's file did not contain the enclosed affidavits, and suggested that I write to you.

Inasmuch as I have been advised by Mr. Alexander that the Commission did not consider all the facts presented in the affidavits in making its ruling, and inasmuch as my agreement to waive a formal hearing was predicated on the assumption that the matter could be resolved on the basis of submission of documents and in fact these documents were submitted although mailed to what appears to be an incorrect office, I respectfully request that the Commission consider the enclosed affidavits in its determination of this matter. To do otherwise would impose an undo and an unfair hardship on Mrs. Wilson since it would then necessitate a formal filing under an Article 78 proceeding.

Accordingly, I respectfully request that you allow us to submit original copies of these affidavits and that the Commission review this matter once again.

Respectfully submitted,


C.H. Leshkowitz

/sfc