

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

FREDERICK C. BRUNS

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Unincorporated Business :
Taxes under Article ~~XX~~ 23 of the :
Tax Law for the Year ~~XXXX XXXXXX~~ 1971:

State of New York
County of Albany

Catherine Steele, being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 27th day of August, 1976, she served the within
Notice of Decision by (certified) mail upon Frederick C. Bruns

~~representative of~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. Frederick C. Bruns
150 Greenway Terrace
Forest Hills, New York 11375

and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) 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~~
~~XXXX~~ 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 August, 1976.

Catherine Steele

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU

STATE CAMPUS
ALBANY, N.Y. 12227

ADDRESS YOUR REPLY TO

August 27, 1976

TELEPHONE: (518) **457-3850**

Mr. Frederick C. Bruns
150 Greenway Terrace
Forest Hills, New York 11375

Dear Mr. Bruns:

Please take notice of the **DECISION**
of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to
Section ~~706~~ **722** of the Tax Law, any
proceeding in court to review an adverse deci-
sion must be commenced within **4 months**
from the date of this notice.

Inquiries concerning the computation of tax
due or refund allowed in accordance with this
decision or concerning any other matter relative
hereto may be addressed to the undersigned. They
will be referred to the proper party for reply.

Very truly yours,

Frank J. Puccia
Frank J. Puccia
Supervisor of Small
Claims Hearings

Enc.

~~cc: Petitioner's Representative.~~

Taxing Bureau's Representative:

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
FREDERICK C. BRUNS	:	DECISION
for a Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business Taxes	:	
under Article 23 of the Tax Law for the	:	
Year 1971.	:	

Petitioner, Frederick C. Bruns, 150 Greenway Terrace, Forest Hills, New York 11375, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for 1971. (File No. 06-0742301).

A small claims hearing was held before Harry Huebsch, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 11, 1976, at 10:45 A.M. The petitioner appeared personally. The Income Tax Bureau appeared by Peter Crotty, Esq., (Frank Levitt, Esq., of counsel).

ISSUE

Whether or not petitioner is a responsible person who is subject to 685(g) penalty for willfully failing to collect, truthfully account for and pay over taxes withheld from employees.

FINDINGS OF FACT

1. Petitioner was president of Bruns Advertising Agency, Inc. located in New York, and is presumed to be a responsible person for purposes of collecting and paying over withholding taxes. The corporation failed to pay over withholding tax for 1971 in the amount of \$1,526.58.

(2)

2. In December of 1970, petitioner's cancer of the throat developed to such a degree that he no longer could function in the business. His senses of sight, hearing and smell became greatly impaired.

3. Petitioner did not go near the business during all of 1971 and thereafter. His son ran the business, which was now failing, until he died from cancer during 1971.

4. Petitioner put \$9,000.00 into the business to pay all debts and close the business. Handling the closing was a corporation officer, Joseph Beck, and Harold Carmichael, who did the bookkeeping. The Corporation closed late 1971 or early 1972.

5. Petitioner had no knowledge that withholding tax had not been paid to New York.

CONCLUSIONS OF LAW

A. Although petitioner is presumed to be a responsible person, petitioner is not subject to a penalty under section 685(g) of the Tax Law in that no willfulness was involved in his failure to comply with the requirements of the statute.

B. That the petition of Frederick C. Bruns be granted and the Notice of Deficiency issued July 31, 1972, be cancelled.

DATED: Albany, New York
August 27, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER