

STATE OF NEW YORK
STATE TAX COMMISSION

Funk, Ernest
Per. Income
Art 22

In the Matter of the Petition

of :

ERNEST FUNK :

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

For a Redetermination of a Deficiency or
a Refund of Personal Income :
Taxes under Article(s) 22 of the
Tax Law for the (Year(s)) 1963, 1964 and
1965.

State of New York
County of Albany

Rae Zimmerman , 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 25th day of August , 19 71, she served the within
Notice of Decision (or Determination) by (certified) mail upon Ernest Funk

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Ernest Funk
98-50 Horace Harding Expressway
Rego Park, New York

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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative
of) 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

25th day of August , 1971

Linda Wilson

Rae Zimmerman

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
ERNEST FUNK

For a Redetermination of a Deficiency or
a Refund of Personal Income
Taxes under Article(s) 22 of the
Tax Law for the (Year(s) 1963, 1964 and
1965.

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

State of New York
County of Albany

Rae Zimmerman, 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 25th day of August, 1971, she served the within Notice of Decision (or Determination) by (certified) mail upon Louis Ira Zane, Esq.

(representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Louis Ira Zane, Esq.
222 Beach 145th Street
Neponsit, New York 11694

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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative of) 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

25th day of August, 1971.

Linda Wilson

Rae Zimmerman

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
ERNEST FUNK : DECISION
for Redetermination of Deficiency or for :
Refund of Personal Income Tax under Article 22 :
of the Tax Law for the Years 1963, 1964 and 1965.:
:

Petitioner, Ernest Funk, has filed a petition for redetermination of deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1963, 1964 and 1965. (File No. 11-1956440). A formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York, on April 22, 1971, at 10:55 A.M. Petitioner appeared by Louis I. Zane, Esq. The Income Tax Bureau appeared by Edward H. Best, Esq., (Albert Rossi, Esq., of Counsel).

ISSUE

I. Is petitioner, Ernest Funk, liable for unpaid New York State withholding taxes due from Hotel Bossert Caterers, Inc. for the period from October 1, 1963 through January 29, 1965?

FINDINGS OF FACT

1. Hotel Bossert Caterers, Inc. failed to pay over to the Income Tax Bureau New York State personal income taxes withheld from its employees for the period from October 1, 1963 through January 29, 1965, in the sum of \$845.30. Subsequently, said corporation filed a

petition in bankruptcy. In the bankruptcy proceeding, New York State received \$16.53, which was applied to the withholding taxes owing, leaving a balance due of \$828.77. The corporation is presently defunct.

2. On April 13, 1967, the Income Tax Bureau issued a Statement of Deficiency imposing a penalty against petitioner, Ernest Funk, equal to the amount of New York State withholding taxes due from Hotel Bossert Caterers, Inc. for the period from October 1, 1963 through January 29, 1965, upon the grounds that he was a person required to collect, truthfully account for and pay over said taxes and that he willfully failed to do so and accordingly issued a Notice of Deficiency in the total sum of \$828.77.

3. During the period from October 1, 1963 through January 29, 1965, petitioner, Ernest Funk, was the banquet manager for Hotel Bossert Caterers, Inc. He booked and supervised banquets for the corporation. He was not a stockholder, officer or director of the corporation. He had no financial interest in it. He had nothing to do with its financial management. He did not set prices for it. He did not sign corporate checks. He did not have access to its books of account. He had nothing to do with its bookkeeping or its withholding of employee taxes.

CONCLUSIONS OF LAW

A. That petitioner, Ernest Funk, as banquet manager of Hotel Bossert Caterers, Inc. was not a person required to collect, truthfully account for and pay over New York State personal income withholding taxes due from said corporation for the period from


October 1, 1963 through January 29, 1965, in accordance with the meaning and intent of sections 674 and 685(1) of the Tax Law.

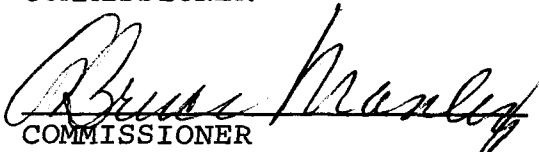
B. That since petitioner, Ernest Funk, was not a person required to collect, truthfully account for and pay over New York State personal income withholding taxes due from Bossert Caterers, Inc. for the period from October 1, 1963, through January 29, 1965, therefore a penalty equal to the total amount of unpaid withholding taxes was improperly assessed against him in accordance with the meaning and intent of section 685(g) of the Tax Law.

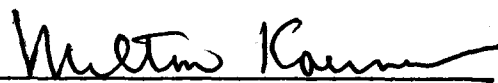
C. That the petition of Ernest Funk is granted and the Notice of Deficiency issued April 13, 1967, is cancelled.

DATED: Albany, New York
August 25, 1971.

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER

Mr. James Scott

Mr. Edward Rook

Edna Mae Gardiner
Assessment #B770621

I believe we had a brief discussion about this case a few days ago. Commissioner Gallman said he would be willing to abate half the interest. If this is O.K. with Income Tax, I'll check and see if we owe any credit on the voucher she mentions and prepare a reply.

EDWARD ROOK

March 26, 1971