

Denberg - Mr. Joseph J.

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JOSEPH J. DENBERG

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) 1965

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

State of New York
County of Albany

Martha Funaro , 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 7th day of July , 1971, she served the within
Notice of Decision (or Determination) by (certified) mail upon Joseph J.

Denberg (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Joseph J. Denberg
230 Central Park West
New York, New York 10024

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

7th day of July , 1971.

Rae Zimmerman

Martha Funaro

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
JOSEPH J. DENBERG	:	DECISION
for a Redetermination of Deficiency	:	
or for Refund of Personal Income Tax	:	
under Article 22 of the Tax Law for	:	
the Year 1965.	:	

Petitioner, Joseph J. Denberg, has filed a petition for redetermination of deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1965. (File No. 13-1687603). At a calendar call held before Hon. Milton Koerner, State Tax Commissioner, at the offices of the State Tax Commission, 80 Centre Street, New York, New York, on April 26, 1971, at 10:30 A.M., the petitioner waived a formal hearing and consented to the issuing of a decision without the introduction of additional evidence on his part. The State Tax Commission renders the following decision after a review by it of the entire record contained in the file.

ISSUES

I. Is petitioner, Joseph J. Denberg, liable for unpaid New York State withholding taxes due from Denbe Originals, Inc. for the year 1965?

II. If petitioner, Joseph J. Denberg, is liable for the afore-said taxes, does the State Tax Commission have the authority to compromise the amount due?

FINDINGS OF FACT

1. During the year 1965, petitioner, Joseph J. Denberg, was president of Denbe Originals, Inc. During the said year said corporation failed to pay over to the Income Tax Bureau New York State personal income taxes withheld from its employees in the sum of \$319.52. Thereafter, the assets of the corporation were sold at auction and the proceeds applied to the payment of unpaid Federal withholding taxes. The corporation is presently defunct.

2. On April 11, 1969, the Income Tax Bureau issued a Statement of Deficiency imposing a penalty against petitioner, Joseph J. Denberg, equal to the amount of New York State withholding taxes due from Denbe Originals, Inc. for the year 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 sum of \$319.52.

3. Petitioner, Joseph J. Denberg, does not deny that during the year 1965 he was a responsible officer of Denbe Originals, Inc. required to collect, truthfully account for and pay over New York State withholding taxes withheld by the corporation and that he willfully failed to do so. He requests, however, in his petition, that the Notice of Deficiency be cancelled because he is 70 years old, is collecting social security and has no assets with which to pay the amount claimed.

4. Petitioner, Joseph J. Denberg, failed to submit any proof to substantiate his contention that he has no assets with which to pay the amount set forth in the Notice of Deficiency or that he has been discharged in bankruptcy.

CONCLUSIONS OF LAW

A. That petitioner, Joseph J. Denberg, as an officer of Denbe Originals, Inc. was a person required to collect, truthfully account for and pay over New York State withholding taxes due from said corporation for the year 1965 in accordance with the meaning and intent of sections 674 and 685(1) of the Tax Law.

B. That since petitioner, Joseph J. Denberg, willfully failed or caused Denbe Originals, Inc. to willfully fail to collect, truthfully account for and pay over New York State withholding taxes due from said corporation for the year 1965, therefore, a penalty equal to the total amount of the unpaid withholding taxes was properly assessed against him in accordance with the meaning and intent of section 685(g) of the Tax Law.

C. That petitioner, Joseph J. Denberg, has failed to prove that he is insolvent or has been discharged in bankruptcy and, therefore, the State Tax Commission does not have the authority to compromise any taxes owing by him in accordance with the meaning and intent of section 171(15) of the Tax Law.

D. That the petition of Joseph J. Denberg is denied and the Notice of Deficiency issued April 11, 1969, is sustained.

DATED: Albany, New York

July 7, 1971

STATE TAX COMMISSION

Norman Gallman
COMMISSIONER

Bruce Brasley
COMMISSIONER

Milton Koehn
COMMISSIONER