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PHOTO MICROGRAPHICS INC.

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ROBERT GARDNER

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) 1961 & 1962:

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 15th day of January , 1973 , she served the within
Notice of Decision (or Determination) by (certified) mail upon Robert Gardner

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Robert Gardner
224-16 59th Avenue
Bayside, 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

15th day of January , 1973.

Lynn Wilson

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

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State of New York
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she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 15th day of January , 1973 , she served the within
Notice of Decision (or Determination) by (certified) mail upon Abel Just

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Abel Just

11 Park Place
New York, New York 10007

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
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Sworn to before me this

15th day of January , 1973.

Lynn Wilson

Martha Funaro



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A

STATE CAMPUS

ALBANY, N. Y. 12226

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION

NORMAN F. GALLMAN, ACTING PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

STATE TAX COMMISSION

HEARING UNIT

EDWARD ROOK

SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

DATED: Albany, New York
January 15, 1973

Robert Gardner
224-16 59th Avenue
Bayside, New York

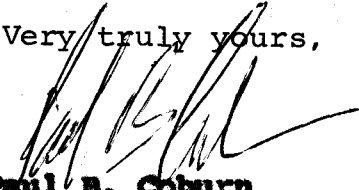
Dear Mr. Gardner:

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

Please take further notice that pursuant to
Section(s) **690** 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.

Any 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.
These will be referred to the proper party for
reply.

Very truly yours,


Paul B. Coburn
HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
ROBERT GARDNER	:	DECISION
for Redetermination of Deficiency or	:	
for Refund of Personal Income Tax	:	
under Article 22 of the Tax Law for	:	
the Years 1961 and 1962.	:	

Petitioner, Robert Gardner, 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 1961 and 1962. (File No. 111608806).

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 October 18, 1972, at 9:15 A.M. Petitioner appeared pro se. The Income Tax Bureau appeared by Saul Heckelman, Esq. (Solomon Sies, Esq., of Counsel).

ISSUE

Is petitioner, Robert Gardner, liable for unpaid New York State withholding taxes due from Direct Auto Service, Inc. for the period July 1, 1961 through September 30, 1962?

FINDINGS OF FACT

1. Direct Auto Service, Inc. failed to pay over to the Income Tax Bureau New York State personal income taxes withheld from its employees for the period July 1, 1961 through September 30, 1962. The corporation became insolvent and went out of business in 1962.

2. On February 5, 1965, the Income Tax Bureau issued a Notice and Demand for payment of tax due under jeopardy assessment against petitioner, Robert Gardner, imposing a penalty equal to the amount of New York State withholding taxes due from Direct Auto Service, Inc. for the period from July 1, 1961 through September 30, 1962, 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. On March 1, 1965, in accordance with the aforesaid Notice and Demand, it issued a Notice of Deficiency for the years 1961 and 1962 in the sum of \$355.90 against petitioner, Robert Gardner.

3. Direct Auto Service, Inc. was engaged in the trucking business during the period July 1, 1961 through September 30, 1962. Petitioner, Robert Gardner, was vice president of the corporation. He signed corporate checks and tax returns. He dispatched trucks and helped the bookkeeper prepare the payroll. His father was the sole stockholder and the only other officer of the corporation. His father's principal responsibility was to take care of the customers and financial affairs of the corporation. His father died shortly after the business failed and left no estate.

4. That prior to the formal hearing petitioner, Robert Gardner, by virtue of a sheriff's execution, involuntarily paid \$75.65 on behalf of the New York State withholding tax liability of Direct Auto Service, Inc. for the period July 1, 1961 through September 30, 1962.

CONCLUSIONS OF LAW

A. That petitioner, Robert Gardner, as an officer of Direct Auto Service, Inc. was a person required to collect, truthfully account for and pay over New York State withholding taxes due from said corporation for the period from July 1, 1961 through September 30, 1962, in accordance with the meaning and intent of sections 674 and 685(1) of the Tax Law.

B. That since petitioner, Robert Gardner, willfully failed or caused Direct Auto Service, Inc. to willfully fail to collect, truthfully account for and pay over New York State withholding taxes due from said corporation for the period from July 1, 1961 through September 30, 1962, 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. Petitioner, Robert Gardner, is entitled to a credit against the aforesaid penalty in the sum of \$75.65.

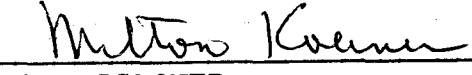
D. That the petition of Robert Gardner is granted to the extent of reducing the amount presently due pursuant to the Notice of Deficiency dated March 1, 1965, from \$355.90 to \$280.25, and, that except as so granted, the petition is in all other respects denied.

DATED: Albany, New York
January 15, 1973

STATE TAX COMMISSION

COMMISSIONER


COMMISSIONER


COMMISSIONER