

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

CLAYTON GRANT

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) 1966 :

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 Clayton Grant

(representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: Clayton Grant

10 North Road

P.O. Box 184

Setauket, New York 11733

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  
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A  
STATE CAMPUS

ALBANY, N. Y. 12227

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION

NORMAN F. GALLMAN, 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**

**Clayton Grant  
10 North Road  
P.O. Box 184  
Setauket, New York 11733**

**Dear Mr. Grant:**

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

Please take further notice that pursuant to **section 690 of**  
the Tax Law any proceeding in court to review an adverse decision  
must be commenced within **4 Months** after  
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 relat-  
ing 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

cc Petitioner's Representative  
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
CLAYTON GRANT	:	DECISION
for Redetermination of Deficiency	:	
or for Refund of Personal Income	:	
Tax under Article 22 of the Tax Law	:	
for the Year 1966.	:	

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Petitioner, Clayton Grant, 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 1966. (File No. 11-2065531). 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 20, 1972, at 10:30 A.M. Petitioner appeared pro se. The Income Tax Bureau appeared by Saul Heckelman, Esq. (Solomon Sies, Esq., of Counsel).

ISSUE

Was petitioner, Clayton Grant, liable for unpaid New York State withholding taxes due from 1777 Corporation d/b/a Fife & Drum Restaurant for the year 1966?

FINDINGS OF FACT

1. The 1777 Corporation d/b/a Fife & Drum Restaurant failed to pay over to the Income Tax Bureau New York State personal income taxes withheld from its employees during the year 1966 in the sum of \$293.80. The corporation is presently insolvent.

2. On July 28, 1969, the Income Tax Bureau issued a Statement of Deficiency against petitioner, Clayton Grant, imposing a penalty equal to the amount of New York State withholding taxes due from 1777 Corporation d/b/a Fife & Drum Restaurant for the year 1966 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. In accordance with the aforesaid Statement of Deficiency, it issued a Notice of Deficiency in the sum of \$293.80.

3. The 1777 Corporation d/b/a Fife & Drum Restaurant was engaged in the restaurant business during the year 1966. It was incorporated in 1964. Petitioner, Clayton Grant, owned one-third of the stock in the corporation. He was a director and a vice-president. He signed corporate checks and tax returns. He invested \$88,000.00 in the corporation. He handled legal and financial matters for the corporation.

4. Petitioner, Clayton Grant, subsequent to 1966, filed a petition for bankruptcy. He received a discharge in bankruptcy on October 21, 1968.

#### CONCLUSIONS OF LAW

A. That petitioner, Clayton Grant, as an officer of 1777 Corporation d/b/a Fife & Drum Restaurant was a person required to collect, truthfully account for and pay over New York State withholding taxes due from said corporation for the year 1966 in accordance with the meaning and intent of sections 674 and 685(1) of the Tax Law.

B. That since petitioner, Clayton Grant, willfully failed or caused 1777 Corporation d/b/a Fife & Drum Restaurant to willfully fail to collect, truthfully account for and pay over New York State withholding due from said corporation for the year 1966, 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.

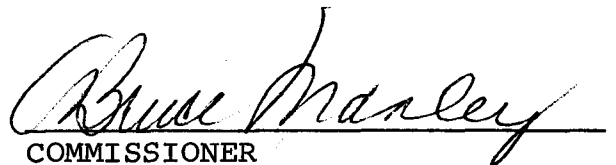
C. That the discharge in bankruptcy obtained by petitioner, Clayton Grant, in 1968, did not release him for his liability for the unpaid New York State withholding taxes due from 1777 Corporation d/b/a Fife & Drum Restaurant for the year 1966, 11 U.S.C.A. section 35(a)(1)(e). Westenberg v. United States of America, 285 F. Supp. 915 (D.C. Ariz., 1968), 68-1 U.S.T.C. ¶9351.

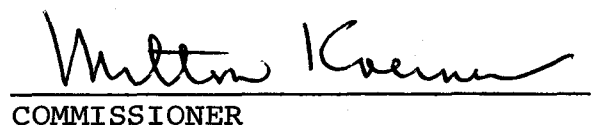
D. That the petition of Clayton Grant is denied and the Notice of Deficiency issued July 29, 1969, is sustained.

DATED: Albany, New York  
January 15, 1973

STATE TAX COMMISSION

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COMMISSIONER

  
COMMISSIONER

  
COMMISSIONER