

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

HARRY GREENBERG

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 & 1967 :

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 November , 1973 , she served the within  
Notice of Decision (or Determination) by (certified) mail upon Harry Greenberg

(representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Mr. Harry Greenberg  
9701 Shore Road  
Brooklyn, 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

7th day of November , 1973

Joyce S. Van Patten

Martha Funaro

STATE OF NEW YORK  
STATE TAX COMMISSION

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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 November , 1973 , she served the within Notice of Decision (or Determination) by (certified) mail upon Hauptman & Hauptman, Esqs. (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Hauptman & Hauptman, Esqs.  
32 Court Street  
Brooklyn, New York 11201

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 November , 1973

Joyce S. Van Patten

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  
HEARING UNIT

EDWARD ROOK  
SECRETARY TO  
COMMISSION

STATE TAX COMMISSION  
Mario A. Procaccino,  
~~XXXXXXXXXXXX~~ PRESIDENT  
A. BRUCE MANLEY  
MILTON KOERNER

ADDRESS YOUR REPLY TO

Dated: Albany, New York

November 7, 1973

Mr. Harry Greenberg  
9701 Shore Road  
Brooklyn, New York

Dear Mr. Greenberg:

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

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In the Matter of the Petition	:	
of	:	
HARRY GREENBERG	:	
for Redetermination of Deficiency or	:	DECISION
for Refund of Personal Income Tax	:	
under Article 22 of the Tax Law for	:	
the Years 1966 and 1967.	:	

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Petitioner, Harry Greenberg, 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 1966 and 1967. (File No. 11-2010311). 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 January 23, 1973, at 2:45 P.M. Petitioner appeared by Hauptman & Hauptman, Esqs., (Salomon A. Hauptman, Esq., of Counsel). The Income Tax Bureau appeared by Saul Heckelman, Esq., (Solomon Sies, Esq., of Counsel).

ISSUE

Was petitioner, Harry Greenberg, liable for unpaid New York State withholding taxes due from Jeff-Lynn Cleaners & Launderers Corp. for the years 1966 and 1967?

FINDINGS OF FACT

1. Jeff-Lynn Cleaners & Launderers Corp. 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 \$552.15, and during the year 1967 in the sum of \$514.15.

2. On November 24, 1969, the Income Tax Bureau issued a Statement of Deficiency against petitioner, Harry Greenberg, equal to the amount of New York State withholding taxes due from Jeff-Lynn Cleaners & Launderers Corp. for the years 1966 and 1967, 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.

3. Petitioner, Harry Greenberg, was president of Jeff-Lynn Cleaners & Launderers Corp. during the years 1966 and 1967. He signed the corporate return for New York State personal income tax withheld for the year 1967. He did not deny that he was a responsible officer, but contended that he was not liable for the unpaid tax because the Income Tax Bureau failed to file a claim in the corporate bankruptcy proceedings. He also contended that the amount alleged to be due for the year 1966 was incorrect.

4. On June 29, 1967, Jeff-Lynn Cleaners & Launderers Corp. filed a petition for arrangement under Chapter XI of the National Bankruptcy Act in the United States District Court for the Eastern District of New York. In August 1968, the court confirmed the corporation's arrangement and discharged it from further judicial control. The Income Tax Bureau had knowledge of the bankruptcy proceedings. However, it failed to file a proof of claim for unpaid withholding taxes for the years 1966 and 1967 with the court in the bankruptcy proceedings.

5. On January 15, 1968, the Income Tax Bureau issued a Notice and Demand for Unpaid Withholding Tax Due against Jeff-Lynn

Cleaners & Launderers Corp. for the year 1966. The computation on said form was as follows:

1. Tax due	\$927.05
2. Tax paid or previously assessed	374.90
3. Balance of tax due	552.15
4. Interest	44.17
5. Penalty	<u>138.04</u>
6. Total	\$734.36
7. Payment received	<u>-0-</u>
8. Balance now due	\$734.36

6. On March 27, 1968, the Counsel to the Department of Taxation and Finance sent a letter to the attorneys for Jeff-Lynn Cleaners & Launderers Corp. waiving the penalty set forth in item "5" and reducing by \$22.85, the amount of interest set forth in item "4" of the Notice and Demand referred to in the proceeding paragraph. The letter concluded that the claim of the Income Tax Bureau was reduced to \$391.26.

#### CONCLUSIONS OF LAW

A. That petitioner, Harry Greenberg, as an officer of Jeff-Lynn Cleaners & Launderers Corp. was a person required to collect, truthfully account for and pay over New York State withholding taxes due from said corporation for the years 1966 and 1967 in accordance with the meaning and intent of sections 674 and 685(1) of the Tax Law.

B. That since petitioner, Harry Greenberg, willfully failed or caused Jeff-Lynn Cleaners & Launderers Corp. to willfully fail to collect, truthfully account for and pay over New York State withholding taxes due from said corporation for the years 1966 and 1967, 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.

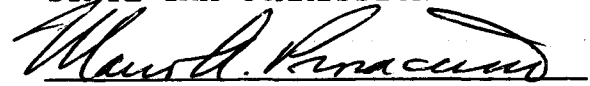
C. That the failure of the Income Tax Bureau to file a proof of claim in the Chapter XI arrangement proceedings of Jeff-Lynn Cleaners & Launderers Corp., even though it had knowledge of the proceedings, did not discharge the liability of the corporation or of its responsible officers for said taxes since withholding tax obligations cannot be discharged in bankruptcy. (11 U.S.C.A. §35(a)(1)(e)). Furthermore, the Income Tax Bureau is under no requirement to attempt to collect unpaid withholding taxes from the corporation before imposing and collecting from responsible officers the penalty provided for by section 685(g) of the Tax Law.


D. That the amount of unpaid withholding taxes due from Jeff-Lynn Cleaners & Launderers Corp. for the year 1966 is \$552.15. The letter of Counsel of the Department of Taxation and Finance dated March 27, 1968, is incorrect in its conclusion since it subtracted penalties and interest from the balance of tax due rather than from the balance due which included penalties, interest and the balance of tax due.

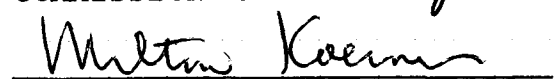
E. That the petition of Harry Greenberg is denied and the Notice of Deficiency issued November 24, 1969, is sustained.

DATED: Albany, New York  
November 7, 1973

STATE TAX COMMISSION

  
COMMISSIONER

  
COMMISSIONER

  
COMMISSIONER