

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
ALAN H. BAUER

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 ~~(x)~~ 22 of the
Tax Law for the Year ~~(x)~~ 1967

State of New York
County of Albany

JANET MACK, 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 8th day of December, 1975, she served the within
Notice of Decision (~~xxx Determination~~) by (certified) mail upon Solomon P. Glushak, CPA
(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Solomon P. Glushak, Esq.
275 Madison Avenue
New York, New York 10016
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

8th day of December, 1975.

Mary Grody

Janet Mack

STATE OF NEW YORK
Department of Taxation and Finance
STATE CAMPUS
ALBANY, N. Y. 12227

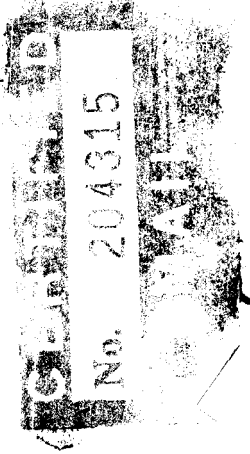
[Handwritten signature]

275 Madison Ave



Dr. P. Glushak

Solomon P. Glushak, Esq.
60 East 42nd Street
New York, New York



275 Madison Ave

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
ALAN H. BAUER

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 **(X)** 22 of the
Tax Law for the Year **(X)** 1967.

State of New York
County of Albany

JANET MACK

, 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 26th day of November, 1975, she served the within

Notice of Decision ~~XXXXXXXXXXXX~~ by (certified) mail upon ALAN H. BAUER

~~XXXXXXXXXXXX~~ the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: Mr. Alan H. Bauer
59 West 71st Street
New York, New York 10023

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 ~~XXXXXXXXXX~~
~~XXX~~ petitioner herein and that the address set forth on said wrapper is the last
known address of the ~~XXXXXXXXXXXXXXXXXXXX~~ petitioner.

Sworn to before me this

26th day of November, 1975

Mary Hoff

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
ALAN H. BAUER

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 (30) 22 of the
Tax Law for the Year (1967).

State of New York
County of Albany

JANET MACK

, 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 26th day of **November**, 1975, she served the within
Notice of Decision ~~XXXXXXXXXXXX~~ by (certified) mail upon **SOLOMON P.**

GLUSHAK, ESQ.

(representative of) the petitioner in the within

proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows:

**Solomon P. Glushak, Esq.
60 East 42nd Street
New York, New York**

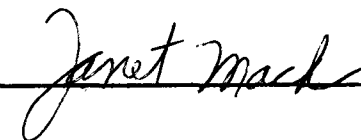
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Post Office Department within the State of New York.

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

26th day of **November**, 1975.







STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION
HEARING UNIT

PAUL GREENBERG
SECRETARY TO
COMMISSION

STATE TAX COMMISSION

JAMES H. TULLY, JR., PRESIDENT
MILTON KOERNER

BUILDING 9, ROOM 107
STATE CAMPUS
ALBANY, N.Y. 12227

AREA CODE 518

ADDRESS YOUR REPLY TO

Mr. Wright
Mr. Coburn
Mr. Leisner

(518) 457-3336

DATED: Albany, New York
November 26, 1975

Mr. Alan H. Bauer
59 West 71st Street
New York, New York 10023

Dear Mr. Bauer:

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

Please take further notice that pursuant to
Section (X) **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

AD-1.12 (8/73)

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
ALAN H. BAUER	:	DECISION
for Redetermination of Deficiency	:	
or for Refund of Personal Income	:	
Tax under Article 22 of the Tax	:	
Law for the Year 1967.	:	

Petitioner, Alan H. Bauer, 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 1967. (File No. 13-2585388.) A formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, 2 World Trade Center, New York, New York, on March 21, 1974, at 10:45 A.M. Petitioner appeared by Solomon P. Glushak, Esq. The Income Tax Bureau appeared by Saul Heckelman, Esq., (Francis X. Boylan, Esq., of Counsel).

ISSUE

Is petitioner, Alan H. Bauer, liable for unpaid withholding taxes due from Bauer & Conway, Inc. for the year 1967?

FINDINGS OF FACT

1. Bauer & Conway, Inc. failed to pay over to the Income Tax Bureau, New York State personal income taxes withheld from its employees for the months of September, October, November and December, 1967 in the total sum of \$957.70. The corporation is presently defunct.

2. On April 14, 1971, the Income Tax Bureau issued a Statement of Deficiency against petitioner, Alan H. Bauer, imposing a penalty equal to the amount of New York State withholding taxes

due from Bauer & Conway, Inc. for the year 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. In accordance with the aforesaid Statement of Deficiency, it issued a Notice of Deficiency against him in the sum of \$957.70.

3. Bauer & Conway, Inc. was incorporated in April, 1967 by petitioner, Alan H. Bauer, and Arthur Conway. The purpose of the corporation was to conduct an advertising business. Each of said individuals owned 50% of the stock of the corporation. They were directors of the corporation. Arthur Conway was the president and treasurer of the corporation. Petitioner, Alan H. Bauer, was the vice-president and secretary of the corporation. The corporation never held any stockholders' or directors' meetings after its inception.

4. From April, 1967 until March, 1968, Arthur Conway managed the financial and production aspects of the corporation's business. He purchased services, paid bills, signed checks and signed tax returns. His former accountant acted as accountant for the corporation.

5. From April, 1967 until March, 1968, petitioner, Alan H. Bauer, managed the creative work of the corporation's business. He did not sign any corporate checks, although he had the authority to do so. He did not sign any tax returns. He did not have anything to do with the financial affairs of the corporation. He was not aware in 1967 that there were any unpaid creditors or withholding taxes. In the spring of 1968, when he became aware of the adverse financial condition of the corporation, he terminated his relationship with it and transferred his stock and interest in it to Arthur Conway in consideration for Arthur Conway indemnifying him against claims for withholding taxes and certain other liabilities.

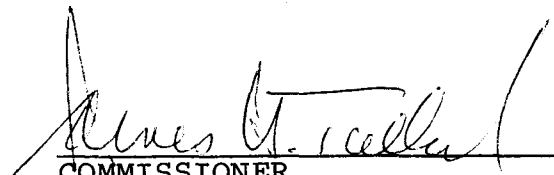
CONCLUSIONS OF LAW

A. That petitioner, Alan H. Bauer, was not a responsible officer who willfully failed to collect, truthfully account for any pay over New York State withholding taxes due from Bauer & Conway, Inc. for the months of September, October, November and December, 1967, and therefore a penalty equal to the total amount of the unpaid withholding taxes should not have been assessed against him in accordance with the meaning and intent of sections 674, 685(1) and 685(g) of the Tax Law.

B. That the petition of Alan H. Bauer is granted and the Notice of Deficiency issued April 14, 1971, is cancelled.

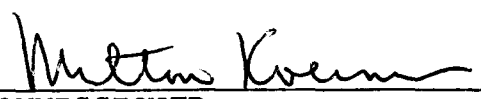
DATED: Albany, New York
November 26, 1975

STATE TAX COMMISSION



COMMISSIONER

COMMISSIONER



COMMISSIONER