

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

BERNARD BROWNSTEIN

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(s) 22 of the  
Tax Law for the Year(s) 1967 and 1968.:

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 4th day of March , 1975 , she served the within  
Notice of Decision (or ~~Decision~~) by (certified) mail upon Bernard Brownstein

(~~representative of~~) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Mr. Bernard Brownstein  
1418 Kew Avenue  
Hewlett, 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

4th day of March , 1975.

Katherine D. Manly

Janet Mack

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

BERNARD BROWNSTEIN

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) 1967 and 1968.:

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

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 4th day of March , 1975 , she served the within  
Notice of Decision (~~for Redetermination~~) by (certified) mail upon Joel Hoffman, C.P.A.

(representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Joel Hoffman, C.P.A.  
Margold, Ersken & Wang  
19 West 44th Street  
New York, New York 10036  
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

4th day of March , 1975.

Katherine D. Manley

Janet Mack



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION  
HEARING UNIT

EDWARD ROOK  
SECRETARY TO  
COMMISSION

STATE TAX COMMISSION

MARIO A. PROCACCINO, PRESIDENT  
A. BRUCE MANLEY  
MILTON KOERNER

BUILDING 9, ROOM 214-A  
STATE CAMPUS  
ALBANY, N.Y. 12227

AREA CODE 518

ADDRESS YOUR REPLY TO

MR. WRIGHT 457-2655  
MR. LEISNER 457-2657  
MR. COBURN 457-2896

**DATED:** Albany, New York  
**March 4, 1975**

**Mr. Bernard Brownstein**  
**1418 Kew Avenue**  
**Hewlett, New York**

**Dear Mr. Brownstein:**

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

Please take further notice that pursuant to  
Section **(a) 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 A. Coburn**  
HEARING OFFICER

Enc.

cc: Petitioner's Representative  
Law Bureau

AD-1.12 (8/73)

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
BERNARD BROWNSTEIN	:	DECISION
for Redetermination of Deficiency or for	:	
Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Years	:	
1967 and 1968.	:	

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Petitioner, Bernard Brownstein, 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 1967 and 1968. (File No. 13-6198032). A formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 25, 1974, at 9:40 A.M. Margold, Ersken & Wang by Joel Hoffman, C.P.A. appeared for petitioner. Saul Heckelman, Esq. (Solomon Sies, Esq. of counsel) appeared for the Income Tax Bureau.

ISSUE

Was petitioner, Bernard Brownstein, liable for unpaid New York State withholding taxes due from Marbern Construction Co., Inc. in the sum of \$625.00 for the period from July 1, 1967 to October 3, 1967?

FINDINGS OF FACT

1. On October 28, 1968, the Income Tax Bureau issued a Statement of Deficiency against petitioner, Bernard Brownstein, imposing a penalty in the sum of \$1,270.00, which was equal to the amount of unpaid withholding taxes alleged to be due from Marbern Construction Co., Inc. for the period from July 1, 1967, to January 11, 1968, 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 \$1,270.00. Subsequently, the amount of the penalty was reduced by the Income Tax Bureau to the sum of \$625.00 which represented the estimated withholding taxes due for the period from July 1, 1967 to October 3, 1967. It was conceded by the Income Tax Bureau that no withholding taxes were due for any subsequent periods.

2. Petitioner, Bernard Brownstein, was president and a stockholder of Marbern Construction Co., Inc. during the period July 1, 1967 to October 3, 1967. He conceded at the formal hearing that he was a responsible officer of said corporation who had an obligation to withhold and pay over, but he contended that there were no New York State withholding taxes due from said corporation for said period.

3. On October 3, 1967, Marbern Construction Company filed an assignment for the benefit of creditors with the New York County Clerk. At the time of filing it owed unpaid withholding taxes for the period from July 1, 1967, to October 3, 1967, in the sum of \$625.00. It did not conduct business subsequent to October 3, 1967. The corporation did not file employees' monthly returns of New York State personal income tax withheld for the period from July 1, 1967, to October 3, 1967. The sum of \$625.00 was an amount estimated by the Income Tax Bureau based upon amounts withheld by the corporation in prior periods. Applicant, Bernard Brownstein, failed to submit any documentary or other substantial evidence to prove the actual amount of withholding taxes due from the corporation for said period.

CONCLUSIONS OF LAW

A. That petitioner, Bernard Brownstein, as an officer of Marbern Construction Co., Inc. was a person required to collect, truthfully account for and pay over New York State withholding taxes in the sum of \$625.00 due from said corporation for the period from July 1, 1967, to October 3, 1967, in accordance with the meaning and intent of section 674 and former section 685(1) of the Tax Law.

B. That since petitioner, Bernard Brownstein, willfully failed to collect, truthfully account for and pay over New York State withholding taxes due from Marbern Construction Co., Inc.

for the period from July 1, 1967, to October 3, 1967, in the sum of \$625.00, therefore, a penalty equal to the amount of unpaid withholding taxes was properly assessed against him in accordance with the meaning and intent of section 685(g) of the Tax Law.

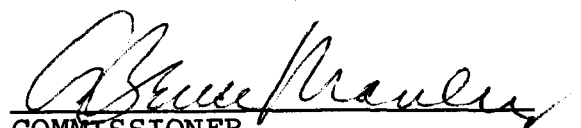
C. That the petition of Bernard Brownstein is granted to the extent of reducing the penalty imposed pursuant to section 685(g) of the Tax Law from \$1,270.00 to \$625.00; that the Income Tax Bureau is hereby directed to accordingly modify the Notice of Deficiency issued October 28, 1968; and, that except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

STATE TAX COMMISSION

March 4, 1975

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER