

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JACK COHEN

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article (X) 22 of the :
Tax Law for the Year(s) ~~or Period(s)~~ :
1969 & 1970.

State of New York
County of Albany

Bruce Batchelor , being duly sworn, deposes and says that
he is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 7th day of June , 1977, he served the within
Notice of Decision by (certified) mail upon Jack Cohen
(~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows:

Mr. Jack Cohen
25 Aspen Lane
New Hyde Park, New York 11040

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 Postal Service within the State of New York.

That deponent further says that the said addressee is the (~~representative~~
~~XXXX~~) 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 June , 1977.

Bruce Batchelor

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JACK COHEN

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article (X) 22 of the :
Tax Law for the Year(s) ~~or Period(s)~~ :
1969 & 1970.

State of New York
County of Albany

Bruce Batchelor, 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 June, 1977, she served the within
Notice of Decision by (certified) mail upon Bennett A. Reiss

(representative of) the petitioner in the within proceeding,

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

Bennett A. Reiss, Esq.
45 North Station Plaza
Great Neck, New York 11021

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 Postal Service within the State of New York.

That deponent further says that the said addressee is the (representative
of the) 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 June, 1977.

Bruce Batchelor

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N.Y. 12227

ADDRESS YOUR REPLY TO

June 7, 1977

TELEPHONE: (518) **457-1723**

Mr. Jack Cohen
25 Aspen Lane
New Hyde Park, New York 11040

Dear Mr. Cohen:

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 deci-
sion must be commenced within **4 months**
from the date of this notice.

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. They
will be referred to the proper party for reply.

Very truly yours,

Paul E. Coburn
Supervising Tax
Hearing Officer

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE TAX COMMISSION

In the Matter of the Petition :
of :
JACK COHEN : DECISION
for Redetermination of a Deficiency :
or for Refund of Personal Income Tax :
under Article 22 of the Tax Law for :
the Years 1969 and 1970.

A hearing was held before Michael Alexander, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 26, 1976 at 10:45 A.M. The taxpayer appeared by Bennett A. Reiss, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Arnold Dorman, Esq., of counsel).

I. Whether the absence of an allegation in the Notice of Deficiency that petitioner, Jack Cohen, was an officer of the corporation which failed to pay over personal income taxes withheld,

constitutes an omission which renders such notice ineffectual in the assertion of petitioner's liability for penalty pursuant to section 685(g) of the Tax Law.

II. Whether petitioner, Jack Cohen, was liable for unpaid New York State withholding taxes due from Cooper & Cohen, Inc. for the periods in question.

FINDINGS OF FACT

1. Cooper & Cohen, Inc. failed to pay over to the Income Tax Bureau, New York State personal income taxes withheld from its employees for the period from October 1, 1969 to December 31, 1969 in the sum of \$3,194.72, and for three periods from April 1, 1970 to November 30, 1970 in the sum of \$6,435.77.

2. On May 24, 1971, the Income Tax Bureau issued a Statement of Deficiency to petitioner, Jack Cohen, for a penalty pursuant to section 685(g), equal to the amount of New York State withholding taxes due from Cooper & Cohen, Inc. for the period from October 1, 1969 to December 31, 1969, 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. Accordingly, a Notice of Deficiency in the sum of \$3,194.72 was issued to petitioner on May 24, 1971.

3. On March 20, 1972, the Income Tax Bureau issued a Statement of Deficiency to petitioner, Jack Cohen, for a penalty pursuant to section 685(g), equal to the amount of New York State

withholding taxes due from Cooper & Cohen, Inc. for the three periods from April 1, 1970 to November 30, 1970. A Notice of Deficiency for these periods in the sum of \$6,435.77 was issued to the petitioner on March 20, 1972.

4. Petitioner, Jack Cohen, started employment with Cooper & Cohen, Inc., a New York corporation with offices at 317 West 37th Street, New York, New York, in 1934 and worked for fifteen years on the night shift, first as an apprentice, then in production and then as a foreman. The business of the corporation was typesetting. Petitioner was a member of Typographical Union No. 6, and when he retired he received a pension from that union.

5. Petitioner was in charge of production which was done on the second floor of 317 West 37th Street. The business offices of Cooper & Cohen, Inc. were located on the fifth floor of this building where they had been situated since the early 1940's. Petitioner's brother, Irving Cohen, was the officer of the corporation and person in charge of administration and finance. Petitioner, Jack Cohen, and his brother, Irving Cohen, each had authority to sign checks, but petitioner signed only one or two checks a year. He never examined the books of the corporation, never supervised any bookkeeping activities and never prepared or examined a tax return.

6. Petitioner, Jack Cohen, received a weekly net salary of \$265.00, which amount was given to him in cash by the bookkeeper.

He did not know what income his brother received. Petitioner never received a dividend as a shareholder and received three Christmas-time bonuses in his thirty five years with the corporation.

7. Petitioner, Jack Cohen, and his brother each owned 50% of the stock in Cooper & Cohen, Inc. Jack Cohen was the secretary and treasurer. Irving Cohen was president and vice-president. Petitioner never viewed his capacity as an officer as anything other than titular, and did not view his stock interest in the corporation as property of any significance. On his resignation, petitioner assigned his entire stock holding to his brother. Despite his stock interest and corporate offices, petitioner thought of himself as an employee.

8. During the years of his involvement with the corporation, petitioner, Jack Cohen, had a few conversations with his brother, Irving Cohen, regarding the need to borrow money to meet tax liabilities. The last such conversation was in the fall of 1969, and a loan was signed for by both parties. Petitioner states he knew nothing further regarding the exact liability, whether the liability was ever paid or the loan ever repaid.

9. On May 1, 1970, petitioner, Jack Cohen, left for a vacation in Florida. Four days later, he suffered a coronary and was advised by his doctor not to return to the business. Subsequently, petitioner sent a letter of resignation dated July 10, 1970, and also assigned all his shares in the corporation to his

brother, Irving Cohen. By letter of July 27, 1970, Irving Cohen advised petitioner that his resignation as secretary-treasurer was accepted, and that the assignment of his entire stock-ownership to Irving Cohen was effective. This assignment was made without consideration.

10. Petitioner, Jack Cohen, objects to his "derivative liability" based on the alleged failure of the operating bureau to indicate that petitioner is an officer of Cooper & Cohen, Inc.

CONCLUSIONS OF LAW

A. That the statements of deficiency attached to the notices of deficiency sent petitioner, Jack Cohen, provide that available information indicates that petitioner is a "person" as defined in section 685(n), and liable for the penalty under section 685(g) of the Tax Law, and that such statements afford both sufficient notice of and basis for the penalty asserted, and that the burden of disproving the liability asserted is upon the taxpayer, petitioner, Jack Cohen.

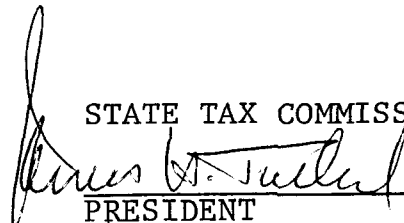

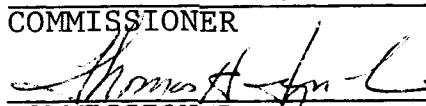
B. That petitioner, Jack Cohen, as an officer and shareholder of Cooper & Cohen, Inc. was a person required to collect, truthfully account for, and pay over New York State withholding taxes due from said corporation for the period from October 1, 1969 to December 31, 1969, in accordance with the meaning and intent of section 674 and 685(n) of the Tax Law.

C. That since petitioner, Jack Cohen, willfully failed or caused Cooper & Cohen, 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 October 1, 1969 to December 31, 1969, a penalty equal to the total amount of the unpaid withholding taxes for said period was properly asserted against him in the Notice of Deficiency dated May 24, 1971, in accordance with the meaning and intent of section 685(g) of the Tax Law.

D. That petitioner, Jack Cohen, due to illness and his resignation as an officer of Cooper & Cohen, Inc. in May and July of 1970, was not a person required to collect, truthfully account for, and pay over New York State withholding taxes due from Cooper & Cohen, Inc. for the period from April 1, 1970 to November 30, 1970.

E. That the petition of Jack Cohen is granted to the extent that the penalty asserted in the Notice of Deficiency dated March 20, 1972 pursuant to section 685(g) of the Tax Law for the period from April 1, 1970 to November 30, 1970 is cancelled.

DATED: Albany, New York
June 7, 1977

STATE TAX COMMISSION

PRESIDENT

COMMISSIONER

COMMISSIONER