

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ERNEST KAUFMAN

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of **Personal Income** :
Taxes under Article ~~(6)~~ 22 of the :
Tax Law for the Year ~~(1971)~~ 1972.:
~~(1971)~~

State of New York
County of Albany

Marsina Donnini, 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 22 day of August, 1977, she served the within
Notice of Decision by (certified) mail upon Ernest Kaufman

~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. Ernest Kaufman
947 E. 101st Street
Brooklyn, New York 11236

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)~~
~~(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

22 day of August, 1977.

Marsina Donnini

Janet Muck



STATE OF NEW YORK
STATE TAX COMMISSION
TAX APPEALS BUREAU
ALBANY, NEW YORK 12227

JAMES H. TULLY JR., PRESIDENT
MILTON KOERNER
THOMAS H. LYNCH

August 22, 1977

**Mr. Ernest Kaufman
947 E. 101st Street
Brooklyn, New York 11236**

Dear Mr. Kaufman:

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

You have now exhausted your right of review at the administrative level. Pursuant to section ~~(a)~~ **690** of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within **4 months** from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,


**Joseph Chyrywat
Hearing Examiner**

cc: ~~Delivered to Representative~~

Taxing Bureau's Representative

STATE TAX COMMISSION

In the Matter of the Petition :
of :
ERNEST KAUFMAN :
for Redetermination of Deficiency or for :
Refund of Personal Income Taxes under :
Article 22 of the Tax Law for the :
Year 1972. :

Petitioner, Ernest Kaufman, residing at 947 E. 101st Street, Brooklyn, New York 11236, filed a petition for redetermination of deficiency or for refund of personal income taxes under Article 22 of the Tax Law for the year 1972. (File No. 13507).

A small claims hearing was held before Harry Huebsch, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on March 28, 1977 at 2:45 P.M. Petitioner appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq., (Aliza Schwadron, Esq., of counsel).

ISSUE

Was petitioner, Ernest Kaufman, liable for penalty asserted against him in accordance with section 685(g) of the Tax Law with respect to unpaid withholding taxes due from Jon Weston, Inc. for the year 1972?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Petitioner's only employer during the last twenty-five years was Detex Corporation. He lived at his present address for eighteen years.

2. Petitioner was never an officer, employee or stockholder of Jon Weston, Inc. He had no knowledge of said corporation and never lived at any of the addresses listed for officers in the corporation's file folder.

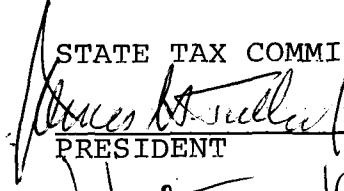
3. That petitioner, Ernest Kaufman, was not a person under a duty to perform the task of collecting, truthfully accounting for and paying over the withholding taxes deducted from the wages of employees of Jon Weston, Inc. in accordance with the meaning and intent of section 685(n) of the Tax Law.

4. That petitioner did not willfully fail or cause Jon Weston, Inc. to willfully fail to collect, truthfully account for and pay over to New York State withholding taxes due from said corporation for the year 1972. Therefore, a penalty equal to the total amount of the unpaid withholding taxes was improperly asserted against him in accordance with the meaning and intent of section 685(g) of the Tax Law.


5. That the petition of Ernest Kaufman is granted and the Notice of Deficiency in the amount of \$1,205.15 issued January 26, 1976 is cancelled.

DATED: Albany, New York
August 22, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER