

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

IRVING LEVINSON

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 ~~(x)~~ ~~or Period~~ ~~(x)~~ 1972.:  
~~(x)~~

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 4th day of March , 19 77, ~~he~~ served the within  
Notice of Decision by (certified) mail upon Irving Levinson

~~(representative of)~~ the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows:

Mr. Irving Levinson  
24 Parkview Court  
White Plains, 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 Postal Service within the State of New York.

That deponent further says that the said addressee is the ~~(representative of)~~  
~~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

4th day of March , 19 77

Bruce Batchelor

Janet Mack

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

IRVING LEVINSON

AFFIDAVIT OF MAILING

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

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 4th day of March , 1977, ~~he~~ served the within  
Notice of Decision by (certified) mail upon Sol Kalow  
(representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Sol Kalow, CPA  
Kalow and Bass  
570 Seventh Avenue  
New York, New York 10018  
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

4th day of March , 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

March 4, 1977

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

Mr. Irving Levinson  
24 Parkview Court  
White Plains, New York

Dear Mr. Levinson:

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

Please take further notice that pursuant to  
Section(2) **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,

**Frank J. Puccia**  
**Supervisor of Small**  
**Claims Hearings**

Enc.

cc: Petitioner's Representative.

Taxing Bureau's Representative:

## STATE TAX COMMISSION

## DECISION

A small claims hearing was held before Joseph A. Milack, Small Claims Hearing Officer, on August 27, 1976, at 9:15 A.M. at the offices of the State Tax Commission, Two World Trade Center, New York, New York. The petitioner appeared pro se and by Sol Kalow, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq., (Louis Senft, Esq. of counsel).

Whether petitioner, Irving Levinson, is liable for unpaid New York State withholding taxes due from Stuyvesant Press Corporation for the second half of January, 1972.

FINDINGS OF FACT

1. The Stuyvesant Press Corporation failed to pay over to the Income Tax Bureau, New York State personal income taxes withheld from its employees during the second half of January, 1972. Stuyvesant Press Corporation was adjudicated bankrupt on May 11, 1973.

2. On June 30, 1975, the Income Tax Bureau issued a Statement of Deficiency against petitioner, Irving Levinson, imposing a penalty equal to the amount of New York State withholding taxes due from Stuyvesant Press Corporation for the second half of January, 1972 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 in the sum of \$1,204.14.

3. Petitioner, Irving Levinson, was an officer and stockholder of Stuyvesant Press Corporation. He signed checks, tax returns and other documents of said corporation.

4. The Stuyvesant Press Corporation filed IT-2101's Employer's Return of New York State Personal Income Tax withheld, for all periods in 1972, including the second half of January. The file of said corporation maintained by the Income Tax Bureau indicates payment of all withholding taxes during 1972 with the exception of the second half of January.

5. As a result of bankruptcy proceedings, the books and records of the Stuyvesant Press Corporation are decentralized and in the possession of several persons. The scanty and incomplete records that petitioner, Irving Levinson, has been able to obtain indicate that a check was issued payable to the New York State Income Tax Bureau in the sum of \$1,204.14 and that said check accompanied the withholding tax return for the second half of January, 1972. The petitioner has been unable to secure documentary evidence from the available books and records or from the Chase Manhattan Bank.

6. The Stuyvesant Press Corporation received a Notice of Deficiency in withholding taxes on October 3, 1974, more than sixteen months after being adjudicated bankrupt.

#### CONCLUSIONS OF LAW

A. That, petitioner, Irving Levinson, was a person required to collect, truthfully account for and pay over New York State withholding taxes due from the Stuyvesant Press Corporation for the year 1972, in accordance with the meaning and intent of sections 674 and 685(n) of the Tax Law.

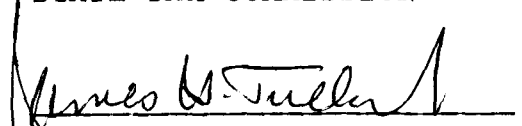
B. That, although petitioner, Irving Levinson, was a person required to collect, truthfully account for and pay over New York State withholding taxes as previously stated; he did not willfully fail or cause Stuyvesant Press Corporation to willfully fail to do so within

meaning and intent of section 685(g) of the Tax Law. The record in this case reveals that the nonpayment of said taxes was done inadvertently and not voluntarily, consciously or intentionally. Furthermore, when the deficiency was revealed, the petitioner was without authority to make or authorize such a payment.

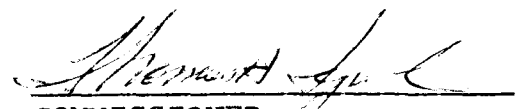
C. That, the petition of Irving Levinson is sustained and the Notice of Deficiency issued on June 30, 1975 is cancelled.

DATED: Albany, New York  
March 4, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER