

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
FREDERICK E. KATEN

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article (8) 22 of the :
Tax Law for the Year (8) ~~XXXXXX~~ (8) :
1973

State of New York
County of Albany

John Huhn, 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 1 day of September, 1978, she served the within
Notice of Decision by (certified) mail upon Frederick E. Katen

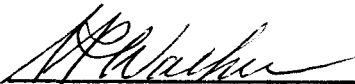
(~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Frederick E. Katen
223 South Broadway
Tarrytown, NY

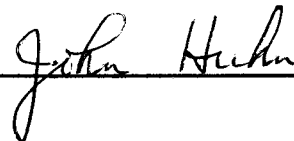
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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

1 day of September, 1978







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

September 1, 1978

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

**Frederick E. Katen
223 South Broadway
Tarrytown, NY**

Dear Mr. Katen:

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 ~~(x)~~ **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,

**Michael Alexander
Supervising Tax
Hearing Officer**

cc: ~~Receptionist's Representative~~

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
FREDERICK E. KATEN	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article	:	
22 of the Tax Law for the Year 1973.	:	

In the Matter of the Petition	:	
of	:	
DONALD DAVIS	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article	:	
22 of the Tax Law for the Year 1973.	:	

Petitioner, Frederick E. Katen, 223 South Broadway, Tarrytown, New York, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1973 (File No. 12652).

Petitioner, Donald Davis, 174 Coventry Drive, Lakewood, New Jersey 08701, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1973 (File No. 12653).

A consolidated formal hearing was held before Frank A. Romano, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on March 21, 1977 at 2:45 P.M. Both petitioners appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq. (Abraham Schwartz, Esq., of counsel).

ISSUE

Whether petitioners, were persons required to collect, truthfully account for and pay over the withholding taxes of the employees of Associated Securities Systems, Inc. (within the meaning and intent of section 685(n) of the Tax Law) for the period July 1, 1973 through December 31, 1973 and, if so required, whether said petitioners willfully failed to collect, truthfully account for and pay over the withholding taxes of said corporation (within the meaning and intent of section 685(g) of the Tax Law).

FINDINGS OF FACT

1. Associated Security Systems, Inc. failed to pay over to the New York State Income Tax Bureau personal income taxes withheld from its employees for the period July 1, 1973 through December 31, 1973, in the amount of \$3,101.40, computed as follows:

<u>WITHHOLDING TAX PERIOD</u>	<u>AMOUNT</u>
July 1 - August 21, 1973	\$745.79
September 1 - October 31, 1973	510.20
October 1 - October 31, 1973	854.91
November 1 - November 30, 1973	529.30
December 1 - December 31, 1973	<u>461.20</u>
TOTAL DUE	\$3,101.40

2. On June 30, 1975, the Income Tax Bureau issued a Statement of Deficiency against petitioner Frederick E. Katen, imposing a penalty equal to the amount of New York State withholding taxes due from Associated Security Systems, Inc. for the period July 1, 1973 through December 31, 1973. This was done on the grounds that Mr. Katen 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 dated June 30, 1975 was issued against said petitioner in the amount of \$3,101.40, together with the aforesaid Statement of Deficiency.

3. On June 30, 1975, the Income Tax Bureau issued a Statement of Deficiency against petitioner Donald Davis, imposing a penalty equal to the amount of New York State withholding taxes due from Associated Security Systems, Inc. for the period July 1, 1973 through December 31, 1973. This was done on the grounds that Mr. Davis 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 dated June 30, 1975 was issued against said petitioner in the amount of \$3,101.40, together with the aforesaid Statement of Deficiency.

4. Associated Securities Systems, Inc. was incorporated in the State of New York in or about 1972 and ceased doing business in the latter part of 1973, during which time it was in the business of installing and maintaining hardware systems for burglar alarms.

5. During the period in question, petitioners, Frederick E. Katen and Donald Davis, respectively owned 42.5% and 15% of the shares of stock of Associated Security Systems, Inc. One George Ayoub (not a party to this proceeding) owned 42.5% of the shares of Stock of said corporation. Petitioner Donald Davis was president of Associated Security Systems, Inc., petitioner Frederick E. Katen was vice-president and George Ayoub was secretary treasurer. Petitioners, Frederick E. Katen and Donald Davis, each had authorization (jointly with one other principal) to sign checks and, in fact, did so. They also signed and filed tax returns (Form IT-2101), with full knowledge that payment of withholding taxes were not made by Associated Security Systems, Inc.

6. The Internal Revenue Service has issued assessments and filed liens in the approximate amount of \$25,000.00 against petitioners, Frederick E. Katen and Donald Davis, and George Ayoub, jointly and severally, for their failure to collect and pay over the Federal withholding taxes of Associated Security Systems, Inc.

CONCLUSIONS OF LAW

A. That petitioners, Frederick E. Katen and Donald Davis, knew, or should have known, that Associated Security Systems, Inc. had failed to pay to the Income Tax Bureau the taxes withheld by it for the period July 1, 1973 through December 31, 1973, which taxes constituted trust funds pursuant to section 675 of the Tax Law.

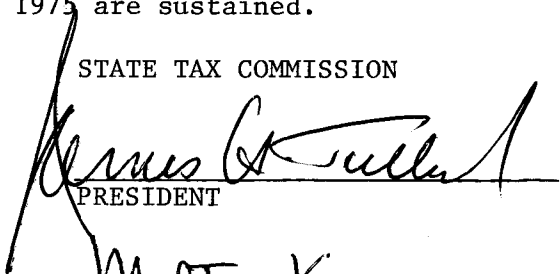
B. That petitioners, Frederick E. Katen and Donald Davis, were persons required to collect, truthfully account for and pay over the withholding taxes of the employees of Associated Security Systems, Inc. on behalf of said employer, within the meaning and intent of section 685(n) of the Tax Law.

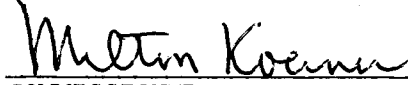
C. That petitioners, Frederick E. Katen and Donald Davis, willfully failed to collect, truthfully account for and pay over the taxes withheld by Associated Security Systems, Inc. during the period July 1, 1973 through December 31, 1973 in the amount of \$3,101.40, within the meaning and intent of section 685(g) of the Tax Law. (Matter of Thomas Levin v. Gallman, 42 N.Y. 2d 32, 396 N.Y.S. 2d 623 (1977)).

D. That the petitions of Frederick E. Katen and Donald Davis are hereby denied and the notices of deficiency issued June 30, 1975 are sustained.

DATED: Albany, New York
September 1, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

TA-36 (4-76) 25 **FORMAL HEARING**

STATE OF NEW YORK

Department of Taxation and Finance

TAX APPEALS BUREAU

STATE CAMPUS

ALBANY, N. Y. 12227

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED
DATE 11-14-2001 BY 60322 UCBAW/STP

~~Frederick E. Katen
223 South Broadway
Tarrytown, NY~~



moved by me 14/88
7/94

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STATE TAX COMMISSION

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Tarrytown, NY 10591

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22 day of September, 1978

John Huhn