

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
WALTER E. AUCH

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)~~ ~~1973~~ ~~1974~~ :
1974

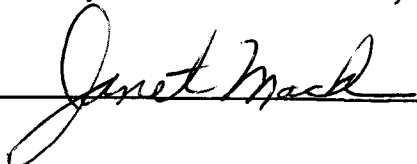
State of New York
County of Albany

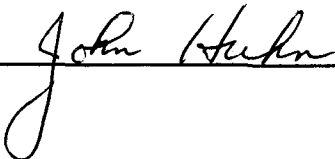
John Huhn , being duly sworn, deposes and says that
he is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 14th day of February , 1978 , he served the within
Notice of Decision by (certified) mail upon Walter E. Auch
~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Walter E. Auch
92 Husted Lane
Greenwich, Connecticut 06830
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

14th day of February , 19 78





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
WALTER E. AUCH

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article ~~(5)~~ 22 of the :
Tax Law for the Year ~~(5) XXXX Period (5)~~ :
1974

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 14th day of February, 1978, ~~she~~ served the within
Notice of Decision by (certified) mail upon Lawrence J. Groskin, Esq.

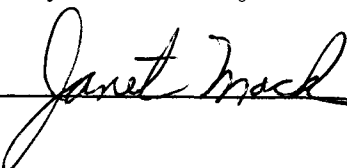
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Lawrence J. Groskin, Esq.
140 Broadway
New York, New York 10005

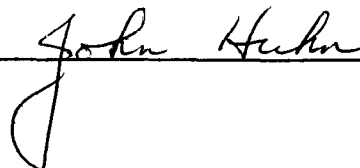
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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

14th day of February, 1978.







STATE OF NEW YORK
STATE TAX COMMISSION
TAX APPEALS BUREAU
ALBANY, NEW YORK 12227
February 14, 1978

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

Walter E. Auch
92 Husted Lane
Greenwich, Connecticut 06830

Dear Mr. Auch:

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 **(b) 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 CHYRYWATT
HEARING OFFICER

cc: Petitioner's Representative
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
WALTER E. AUCH	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Year	:	
1974.	:	

Petitioner, Walter E. Auch, residing at 92 Husted Lane, Greenwich, Connecticut 06830, 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 1974 (File No. 14002).

A small claims hearing was held before Philip Mercurio, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on April 1, 1977 at 10:45 A.M. The petitioner appeared by Lawrence J. Groskin, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Irving Atkins, Esq., of counsel).

ISSUE

Whether petitioner was subject to a penalty under section 685(g) of the Tax Law, as a person who failed to collect, truthfully account for and pay over New York State withholding taxes due from Dupont Walston, Incorporated, for the period January 1, 1974 to March 31, 1974.

FINDINGS OF FACT

1. Petitioner, Walter E. Auch, was the president of Dupont Walston, Inc. prior to January 1 and through April of 1974, at which time he resigned. During said

period, Dupont Walston, Inc. controlled all its own "front office" operations (such as sales) while another company, Dupont Glore Forgan, in consideration of a monthly fee, controlled all "back office" operations. These dealt mainly with accounting and financial management. Dupont Walston, Inc. was adjudicated bankrupt on May 29, 1974.

2. Petitioner contended that as president of Dupont Walston, Inc., he was responsible for managing its sales' operation, but had no authority to sign the checks of said firm. He further testified that he had no authority over or knowledge of payroll matters, including payroll taxes.

3. "Employer's Returns of New York State Personal Income Tax Withheld" were filed for Dupont Walston, Inc. for all periods in 1974 and the total shown to be due of \$155,852.03 was paid. An information return ("Reconciliation of Personal Income Tax Withheld") was filed by the trustee in bankruptcy for Dupont Walston, Inc. for 1974. This information return indicated that New York State income tax withheld from its employees amounted to \$157,390.90 for 1974. However, only payments made from June through December of 1974 were recorded on said form. No evidence was submitted to indicate that the amount of New York State withholding tax reported on the employer's returns or on the information return was accurate or correct.

4. On September 29, 1975, the Income Tax Bureau issued a Notice of Deficiency against petitioner, Walter E. Auch, imposing a penalty (pursuant to section 685(g) of the Tax Law) equal to the amount of alleged unpaid New York State withholding tax due from Dupont Walston, Inc. for the period January 1, 1974 to March 31, 1974.

CONCLUSIONS OF LAW

A. That petitioner, Walter E. Auch, was a person required to collect, truthfully account for and pay over New York State withholding taxes allegedly due from the Dupont Walston, Inc. for the period January 1, 1974 to March 31, 1974, in accordance with the meaning and intent of sections 674 and 685(n) of the Tax Law.

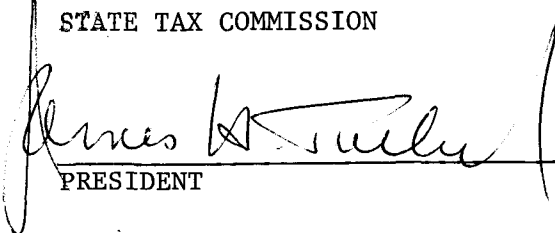
B. That, although petitioner was a person required to collect, truthfully account for and pay over New York State withholding taxes, he did not willfully fail or cause Dupont Walston, Inc. to fail to do so within the meaning and intent of section 685(g) of the Tax Law. The facts do not clearly show that any additional tax was due and, if in fact, there was a non-payment of said tax for the period January 1, 1974 to March 31, 1974, it was done inadvertently and not voluntarily, consciously or intentionally (Levin v. Gallman, et al, 42 NY 2d 32 (1977)).

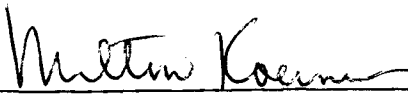
C. That the petition of Walter E. Auch is granted and the Notice of Deficiency issued on September 29, 1975 in the sum of \$1,538.87 is cancelled.

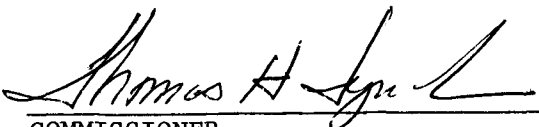
DATED: Albany, New York

February 14, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER



STATE OF NEW YORK
STATE TAX COMMISSION
TAX APPEALS BUREAU
ALBANY, NEW YORK 12227
February 14, 1978

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Sincerely,


JOSEPH CHYNOWETH
HEARING OFFICER

cc: Petitioner's Representative

Taxing Bureau's Representative

TA-26 (4-76) 25M

STATE OF NEW YORK

Department of Taxation and Finance

TAX APPEALS BUREAU

STATE CAMPUS

ALBANY, N. Y. 12227



Lawrence J. Groskin, Esq.
140 Broadway
New York, New York 10005

North Directory

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
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WALTER E. AUCH	:	DECISION
for Redetermination of a Deficiency or	:	
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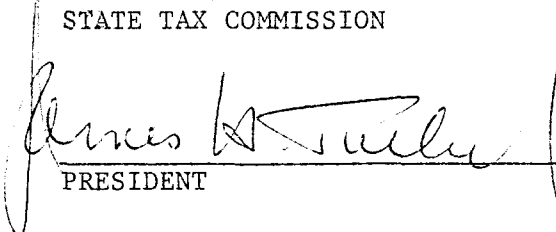
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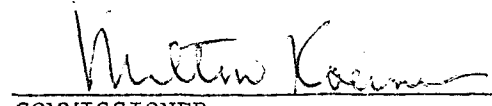
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DATED: Albany, New York

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