

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

BRADLEY B. DAVIS

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article(s) 22 of the :
Tax Law for the Year(s) ~~XXXXXXX~~ :
1969, 1970 and 1972


State of New York
County of

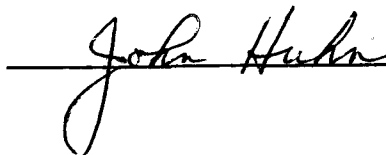
John Huhn, being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 24th day of April, 1978, she served the within
Notice of Decision by (certified) mail upon Bradley B. Davis
~~XXXXXXX~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Bradley B. Davis
1235 Park Avenue
New York, NY 10028
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 ~~XXXXXXX~~
~~XXXXXX~~ petitioner herein and that the address set forth on said wrapper is the
last known address of the ~~XXXXXXX~~ petitioner.

Sworn to before me this

24th day of April, 1978.







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

April 24, 1978

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

**Bradley B. Davis
1235 Park Avenue
New York, NY 10028**

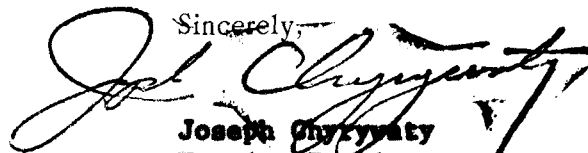
Dear Mr. Davis:

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(s) **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 Chryssaty
Hearing Examiner**

~~cc: Petitioner's Representative~~

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
BRADLEY B. DAVIS	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax	:	
under Article 22 of the Tax Law for	:	
the Years 1969, 1970 and 1972.	:	

Petitioner, Bradley B. Davis, 1235 Park Avenue, New York, New York 10028, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1969, 1970 and 1972 (File No. 14175).

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 June 28, 1977 at 4:10 P.M. Petitioner appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq. (Irwin Levy, Esq., of counsel).

ISSUES

I. Whether petitioner was liable for the penalty imposed against him by section 685(g) of the Tax Law for unpaid New York State withholding tax due from Educational Guidance Center for Mentally Retarded, Inc.

II. Whether the Notice of Deficiency was made invalid by its reference to a personal income and unincorporated business tax liability.

III. Whether the statute of limitations for assessment had expired with respect to the years 1969 and 1970.

IV. Whether an agreement existed between New York State and petitioner which stipulated that the Department of Taxation and Finance would not institute any action against him personally, until certain court actions involving Educational Guidance Center for Mentally Retarded, Inc. were concluded.

FINDINGS OF FACT

1. Educational Guidance Center for Mentally Retarded, Inc. (hereinafter "Educational Guidance") failed to pay over New York State personal income tax withheld from its employees' wages for the years 1969, 1970 and 1972.

2. On December 22, 1975, the Income Tax Bureau issued a Statement of Deficiency against petitioner, Bradley B. Davis, equal to the amount of New York State withholding tax due from Educational Guidance for the years 1969, 1970 and 1972. This was done on the grounds that petitioner was a person required to collect, truthfully account for and pay over said tax and that he willfully failed to do so. Accordingly, the Bureau issued a Notice of Deficiency against him for \$620.69.

3. During 1961 petitioner (an attorney) tended to the legal matters involved in the organization and incorporation of Educational Guidance. He has been a director and/or officer of Educational Guidance from its inception. As a member of the Board of Directors, petitioner participated in the hiring of executive directors, to whom were delegated the day-to-day operations of the organization. He had the authority to sign checks in payment of creditors during all of 1969 and 1970, as well as the period from November 2, 1972 on. On January 31, 1973, petitioner, as treasurer, signed Form IT-2101 (Employers Return of Personal Income Tax Withheld) for the period from October 1, 1972 to October 31, 1972.

4. On December 22, 1975, the Income Tax Bureau issued both a Statement of Deficiency and a Notice of Deficiency. The former explained the issue and tax laws involved, while the latter in its first sentence referred to a "Personal and/or Unincorporated Business Tax liability."

5. No documentary or other satisfactory evidence was submitted to show that forms IT-2101 were filed for the years 1969 and 1970. Notices of Demand for Unpaid Withholding Taxes Due were issued against Educational Guidance by the Income Tax Bureau from the information reported on forms IT-2103 (Reconciliation of New York State Personal Income Tax Withheld) filed by it for said years.

6. No documentary or other satisfactory evidence was submitted to indicate that an agreement was entered into between New York State and petitioner not to institute any action against him.

CONCLUSIONS OF LAW

A. That petitioner, Bradley B. Davis, was a person required to collect, truthfully account for and pay over New York State withholding taxes due from Educational Guidance Center for Mentally Retarded, Inc. for 1969, 1970 and 1972, in accordance with the meaning and intent of section 685(n) of the Tax Law; that petitioner willfully failed or caused Educational Guidance to willfully fail to collect, truthfully account for and pay over New York State withholding taxes due for the years at issue and, therefore, a penalty equal to the total amount of unpaid withholding taxes due from said corporation was properly asserted against him, in accordance with the meaning and intent of section 685(g) of the Tax Law.

B. That the Notice of Deficiency was a valid Notice, in accordance with section 681 of the Tax Law.

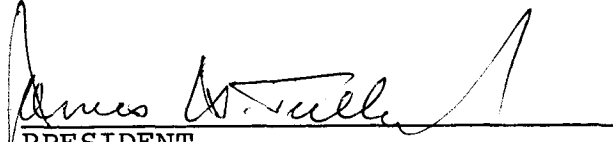
C. That since withholding tax returns (Form IT-2101) were not filed by Educational Guidance for the years 1969 and 1970, the statute of limitations for assessment had not expired for these years, in accordance with the meaning and intent of section 683(c)(1) of the Tax Law.

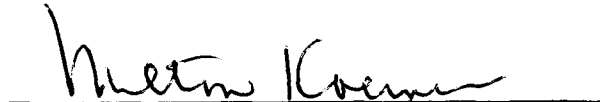
D. That there was no agreement between the State of New York and petitioner, Bradley B. Davis, stipulating that the Department of Taxation and Finance would not institute any action against him.

E. That the petition of Bradley B. Davis is denied and the Notice of Deficiency issued December 22, 1975 is sustained.

DATED: Albany, New York
April 24, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER