

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :

of

Tobias Gold :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :

of a Determination or a Refund of

Personal Income Tax :

under Article 22 of the Tax Law

for the Year 1973. :

State of New York

County of Albany

Jay Vredenburg, 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 31st day of August, 1979, he served the within notice of Decision by certified mail upon Tobias Gold, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Tobias Gold  
11 Beaumont St.  
Brooklyn, NY 11235

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 petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this  
31st day of August, 1979.

Marcy Dominici

J. Vredenburg



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

STATE TAX COMMISSION

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

JOHN J. SOLLECITO  
DIRECTOR

Telephone: (518) 457-1723

August 31, 1979

Tobias Gold  
11 Beaumont St.  
Brooklyn, NY 11235

Dear Mr. Gold:

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,

A handwritten signature in dark ink, appearing to read "John J. Sollecito", written in a cursive style.

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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

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Petitioner, Tobias Gold, 11 Beaumont Street, Brooklyn, New York 11235, 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. 15704).

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 October 27, 1978 at 10:45 A.M. Petitioner appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq. (William Fox, Esq., of counsel).

ISSUES

Whether petitioner was liable for the entire penalty imposed against him under section 685(g) of the Tax Law, with respect to unpaid New York State withholding taxes due from Art Craft Tile and Carpet Co., Inc. for 1973.

FINDINGS OF FACT

1. Art Craft Tile and Carpet Co., Inc. failed to pay over to the Income Tax Bureau \$180.50 in New York State personal income taxes withheld from its employees during 1973.

2. The Income Tax Bureau issued a Statement of Deficiency against petitioner, Tobias Gold, for a penalty equal to the amount of New York State withholding taxes due from Art Craft Tile and Carpet Co., Inc. for 1973. It did so on 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. Accordingly, the Income Tax Bureau issued a Notice of Deficiency to petitioner on March 25, 1974.

3. Of the \$180.50 due, \$11.25 was paid to New York State by a referee in bankruptcy, leaving a total due of \$169.25. On April 30, 1976, petitioner paid one-half of this amount (\$84.63), leaving a balance due and unpaid of \$84.62.

4. Petitioner conceded that he was the president and a responsible officer of Art Craft Tile and Carpet Co., Inc., and that he was liable for the penalty due. However, he contended that there was another responsible officer, and that the Income Tax Bureau failed to vigorously attempt to collect the \$84.62 balance due from said officer.

#### CONCLUSIONS OF LAW

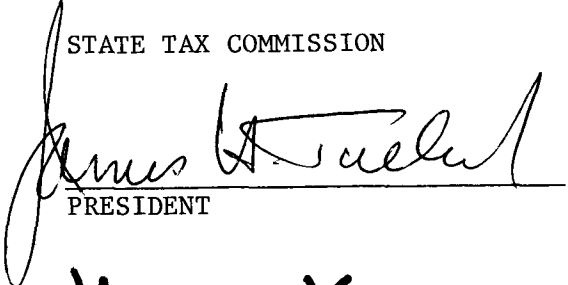
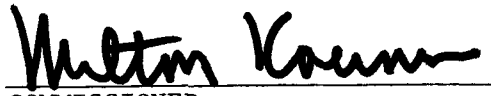
A. That the question to be resolved is that of petitioner's liability for the total penalty, rather than the Income Tax or Tax Compliance Bureaus' collection of the penalty. Petitioner, Tobias Gold, concededly was a person required to collect, truthfully account for and pay over New York State withholding taxes due from Art Craft Tile and Carpet Co., Inc. for 1973, within the meaning of section 685(n) of the Tax Law. Since petitioner willfully failed or caused Art Craft Tile and Carpet Co., Inc. to willfully fail to collect, truthfully account for and pay over New York State withholding taxes due from said corporation, a penalty equal to the total amount of unpaid withholding tax was properly

imposed against him under section 685(g) of the Tax Law. The penalty so imposed is due in full from each responsible person (Matter of Alfonse T. Dentale, State Tax Commission, August 22, 1977); therefore, the balance of the penalty due from petitioner is \$84.62.

B. That the petition of Tobias Gold is denied and the Notice of Deficiency issued March 25, 1974 is sustained.

DATED: Albany, New York

STATE TAX COMMISSION

  
PRESIDENT  
COMMISSIONER  
COMMISSIONER