

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :

of

Peter Mirable :

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 Years 1972 & 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 17th day of August, 1979, he served the within notice of Decision by certified mail upon Peter Mirable, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Peter Mirable  
129 S. Main St.  
Albany, NY 12208

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  
17th day of August, 1979.

Victoria Berry

Jay F. Vredenburg

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :

of

Peter Mirable :

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 Years 1972 & 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 17th day of August, 1979, he served the within notice of Decision by certified mail upon Max J. Zuckerman the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. Max J. Zuckerman  
50 Colvin Ave.  
Albany, NY 12206

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  
17th day of August, 1979.

Victoria Gay

Jay 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 17, 1979

Peter Mirable  
129 S. Main St.  
Albany, NY 12208

Dear Mr. Mirable:

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 cursive script, likely belonging to John J. Sollecito, the Director.

cc: Petitioner's Representative  
Max J. Zuckerman  
50 Colvin Ave.  
Albany, NY 12206  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
PETER MIRABILE : DECISION  
for Redetermination of a Deficiency or :  
for Refund of Personal Income Tax under :  
Article 22 of the Tax Law for the Years :  
1972 and 1973. :  
:

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Petitioner, Peter Mirabile, 129 South Main Street, Albany, New York 12208, 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 1972 and 1973 (File No. 14505).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, Building #9, State Campus, Albany, New York, on August 15, 1978 at 2:45 P.M. Petitioner appeared by Max J. Zuckerman, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (Paul Lefebvre, Esq., of counsel).

#### ISSUE

Whether petitioner was liable for the penalty imposed against him pursuant to section 685(g) of the Tax Law, with respect to unpaid New York State withholding taxes due from Michael Posner, Ltd.

#### FINDINGS OF FACT

1. Michael Posner, Ltd. failed to pay over to the Income Tax Bureau New York State personal income taxes withheld from its employees' wages for the periods July 1, 1972 through December 31, 1972 and July 1, 1973 through December 31, 1973.

2. On February 24, 1976, the Income Tax Bureau issued a Statement of Deficiency against petitioner imposing a penalty equal to the amount of New York State withholding taxes due from Michael Posner, Ltd. for the aforementioned periods. This was done 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 against him for \$457.40 for 1972 and \$425.70 for 1973, for a total due of \$883.10.

3. The Income Tax Bureau alleges that petitioner was a responsible officer, based on the fact that his name appears in Schedule "D" of the New York State Corporation Franchise Tax Report (Form CT-4) for the period ending March 31, 1973. This report gave petitioner's official title as treasurer, but showed that he received no compensation.

4. Petitioner was never an officer of, nor did he sign checks or tax returns on behalf of Michael Posner, Ltd. Mr. Mirabile declared that he had no decision-making authority and did not participate in any business function of said corporation other than to loan it money. He was unaware that a portion of the New York State tax withheld by the corporation had not been paid.

5. Petitioner never drew a salary or any other compensation, nor was there a repayment of any part of his loans made to said corporation.

6. During the periods at issue, petitioner was employed as a union representative. His union had no connection with Michael Posner, Ltd.

#### CONCLUSIONS OF LAW

A. That petitioner, Peter Mirabile, was not a person under a duty to perform the task of collecting and paying over the withholding taxes due from Michael Posner, Ltd., within the meaning and intent of section 685(n) of the Tax Law.

B. That since petitioner did not willfully fail or cause Michael Posner, Ltd. to willfully fail to collect, truthfully account for and pay over New York State withholding taxes due for 1972 and 1973, a penalty equal to the total amount of unpaid withholding taxes was improperly imposed against him under section 685(g) of the Tax Law.

C. That the petition of Peter Mirabile is granted and the Notice of Deficiency issued on February 24, 1976 for \$883.10 is cancelled.

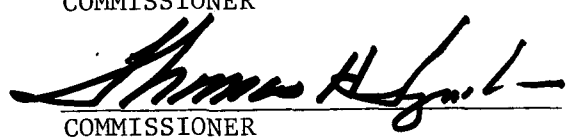
DATED: Albany, New York

AUG 17 1979

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER