

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :

of

Melvyn A. Lischin :

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 1970 & 1971. :

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 3rd day of October, 1980, he served the within notice of Decision by certified mail upon Melvyn A. Lischin, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Melvyn A. Lischin  
15 Charles St.  
New York, NY 10014

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  
3rd day of October, 1980.

Robert Brink

J. Vredenburg

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of

Melvyn A. Lischin :

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Personal Income Tax :  
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for the Years 1970 & 1971. :

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 3rd day of October, 1980, he served the within notice of Decision by certified mail upon Barry J. Mandel 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. Barry J. Mandel  
Baer, Marks & Upham  
299 Park Ave.  
New York, NY 10017

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  
3rd day of October, 1980.

Robert Bank

J. Vredenburg

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

October 3, 1980

Melvyn A. Lischin  
15 Charles St.  
New York, NY 10014

Dear Mr. Lischin:

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:

NYS Dept. Taxation and Finance  
Deputy Commissioner and Counsel  
Albany, New York 12227  
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Barry J. Mandel  
Baer, Marks & Upham  
299 Park Ave.  
New York, NY 10017  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
	:	
MELVYN A. LISCHIN	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Years	:	
1970 and 1971.	:	

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Petitioner, Melvyn A. Lischin, 15 Charles Street, New York, New York 10014, 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 1970 and 1971 (File No. 12547).

A formal hearing was held before Edward L. Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on July 15, 1977 at 11:30 A.M. Petitioner appeared by Baer, Marks & Upham, Esqs. (Barry J. Mandel, Esq., of counsel). The ~~Income Tax~~ Bureau appeared by Peter Crotty, Esq. (Irwin Levy, Esq., of counsel).

ISSUE

Whether petitioner should be held personally liable for a penalty for unpaid New York State income taxes withheld by Mantle Men and Namath Girls, Inc. and by M.M.N.G. Temporaries, Inc. for 1970 and 1971.

FINDINGS OF FACT

1. On October 28, 1974, a Notice of Deficiency was issued by the Income Tax Bureau, assessing petitioner, Melvyn A. Lischin, the sum of \$2,277.32 as a penalty under section 685(g) of the Tax Law as follows:

<u>WITHHOLDING TAX PERIOD</u>	<u>AMOUNT</u>
April 1 to June 30, 1971	\$ 429.12
July 1 to July 31, 1971	402.50
September 1 to September 30, 1971	1,115.10
1971 Balance Due	<u>330.60</u>
TOTAL DUE	\$2,277.32

This was attributed to Employer's Acct. No. 13-2637532, Mantle Men and Namath Girls, Inc. (hereinafter "Mantle Men").

2. On October 28, 1974, another Notice of Deficiency was issued by the Income Tax Bureau, assessing petitioner, Melvyn A. Lischin, the sum of \$31,612.34 as a penalty under section 685(g) of the Tax Law, relating to the nonpayment of income taxes withheld by M.M.N.G. Temporaries, Inc. (hereinafter "MMNG") for 1970 and 1971. This was attributed to Employer's Acct. No. 13-2659340 and the penalty was itemized as follows:

<u>WITHHOLDING TAX PERIOD</u>	<u>AMOUNT</u>
1970 Balance	\$ 8,547.20
October 1 to October 31, 1971	526.16
1971 Balance Due	<u>22,538.98</u>
TOTAL DUE	\$31,612.34

3. The amounts assessed by the Income Tax Bureau have not been paid.

4. On January 27, 1975, petitioner, Melvyn A. Lischin, filed a petition for redetermination of the assessed deficiency, alleging therein that although he had held the title of general manager of MMNG, he had never been more than a mere employee of Mantle Men and had never been an officer of either corporation.

5. Mantle Men was a corporation formed and wholly-owned by Lois Holland Callaway, Inc. (hereinafer "Lois, Inc."), an advertising agency. This subsidiary (apparently established to exploit the then celebrated names of Mickey Mantle and Joe Namath), was engaged in the business of placing personnel on a permanent basis. In May, 1970, Mantle Men hired petitioner, Melvyn A. Lischin, to

establish an agency to recruit and place temporary personnel. Shortly thereafter, MMNG was organized and petitioner, Melvyn A. Lischin, was made MMNG's general manager. His principal job was to make telephone solicitations of employers for the temporaries that he recruited.

6. Financial matters were in the control of Lois, Inc. through MMNG's comptroller (one Edgar Rohan) and through MMNG's President, James Callaway (also president of Mantle Men). Petitioner, Melvyn A. Lischin, was a signatory on checks. All checks required the signature of Edgar Rohan, comptroller of Lois, Inc. No disbursements could be made without the expressed approval of Edgar Rohan.

7. Throughout the period from May, 1970 until September 7, 1971, when petitioner, Melvyn A. Lischin, was discharged, Mantle Men and MMNG had cash-flow problems. The Internal Revenue Service placed liens on their corporate bank accounts because of a delinquency in the payment of Federal income taxes withheld.

8. On January 28, 1972, an involuntary petition in bankruptcy was filed against both Mantle Men and MMNG in the United States District Court for the Southern District of New York.

#### CONCLUSIONS OF LAW

A. That petitioner, Melvyn A. Lischin, was not "...a person required to collect, truthfully account for and pay over the tax imposed by this Article who willfully fails to collect such tax or truthfully account for and pay over such tax..." within the meaning and intent of the Tax Law; therefore, he is not liable for the penalty under section 685(g).

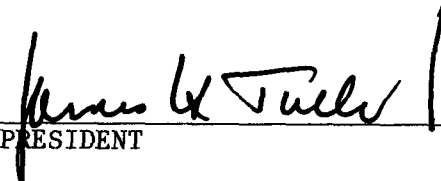
B. That the petition of Melvyn A. Lischin is granted and the notices of

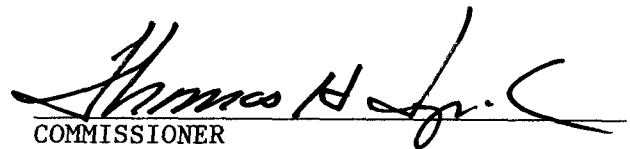
deficiency dated October 28, 1974, assessing deficiencies against him are hereby cancelled.


DATED: Albany, New York

STATE TAX COMMISSION

OCT 03 1980

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER