

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Lawrence Bradford Perkins :
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 1973 - 1975. :

AFFIDAVIT OF MAILING

State of New York
County of Albany

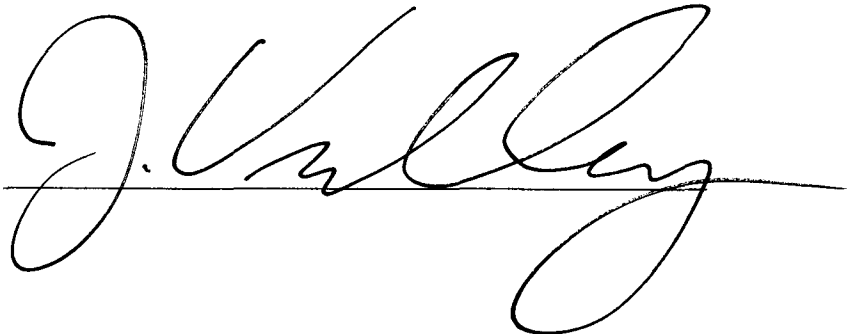
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 6th day of August, 1980, he served the within notice of Decision by certified mail upon Lawrence Bradford Perkins, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Lawrence Bradford Perkins
4 Rectory La.
Scarsdale, NY 10583
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
6th day of August, 1980.

Deborah A. Bank



STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Lawrence Bradford Perkins :

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of
Personal Income Tax :
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for the Years 1973 - 1975. :

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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 6th day of August, 1980, he served the within notice of Decision by certified mail upon Monroe R. Sonneborn and Sanford Krieger the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

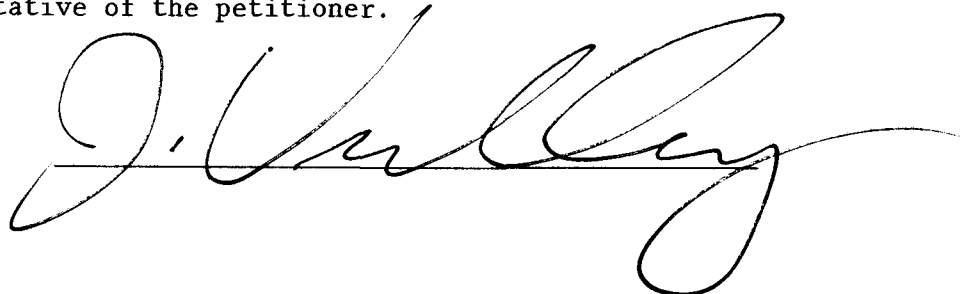
Sirs Monroe R. Sonneborn and Sanford Krieger
Fried, Frank, Harris, Shriver & Jacobson, Esqs.
120 Broadway
New York, NY 10005

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
6th day of August, 1980.

Deborah A. Bank



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

August 6, 1980

Lawrence Bradford Perkins
4 Rectory La.
Scarsdale, NY 10583

Dear Mr. Perkins:

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
Monroe R. Sonneborn and Sanford Krieger
Fried, Frank, Harris, Shriver & Jacobson, Esqs.
120 Broadway
New York, NY 10005
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
LAWRENCE BRADFORD PERKINS, JR.	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Years	:	
1973, 1974 and 1975.	:	

Petitioner, Lawrence Bradford Perkins, Jr., 4 Rectory Lane, Scarsdale, New York 10583, 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 1973, 1974 and 1975 (File No. 19136).

A formal hearing was held before Herbert Carr, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on July 18, 1979 at 9:15 A.M. Petitioner appeared by Fried, Frank, Harris, Shriver & Jacobson, Esqs. (Monroe R. Sonnenborn, Esq. and Sanford Krieger, Esq., of counsel). The Audit Division appeared by Peter Crotty, Esq. (Irwin Levy, Esq., of counsel).

ISSUE

Whether petitioner is liable to a penalty with respect to the failure of Omnidata Services, Inc. to remit withholding tax during 1973, 1974 and 1975.

FINDINGS OF FACT

1. By Notice and Statement of Deficiency dated January 24, 1977, the Audit Division of the Department of Taxation and Finance imposed a penalty of \$28,845.62 against petitioner (named in said documents as "Lawrence Bradford Perkins") under subsection (g) of section 685 of the Tax Law predicated upon petitioner's alleged status as an officer and/or responsible employee of Omnidata Services, Inc. ("Omnidata").

2. The penalty was imposed because of Omnidata's failure to remit withholding tax of \$397.07 for the period September 1, 1973 through December 31, 1973 and \$28,448.55 for the period January 1, 1974 through August 15, 1975.

3. Petitioner became president of Omnidata on April 22, 1972. His duties included signing checks of the corporation for withholding tax.

4. Petitioner officially resigned on October 21, 1973 at which time he severed his relationship with Omnidata and commenced employment with Llewelyn-Davies Associates.

5. Petitioner signed checks for withholding tax for each pay period until his departure from Omnidata.

CONCLUSIONS OF LAW

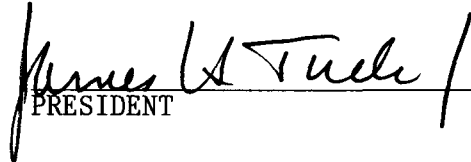
A. That although petitioner was a person required to collect, truthfully account for and pay over the withholding taxes of Omnidata Services, Inc. within the meaning of subsections (g) and (n) of section 685 of the Tax Law, during part of the tax period September 1, 1973 through December 31, 1973, petitioner did not willfully fail to collect, account for, or pay over any tax, nor did he willfully attempt to evade or defeat the tax or the payment thereof. Accordingly, he is not liable to a penalty under subsection (g) of section 685 of the Tax Law for such period.

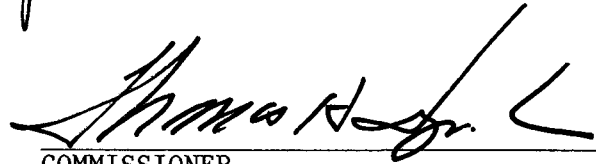
B. That petitioner was not a person required to collect, truthfully account for and pay over the withholding taxes of Omnidata Services, Inc. within the meaning of subsections (g) and (n) of section 685 of the Tax Law for the period January 1, 1974 through August 15, 1975. Thus, petitioner is not liable to a penalty under subsection (g) of section 685 of the Tax Law during the period January 1, 1974 through August 15, 1975.

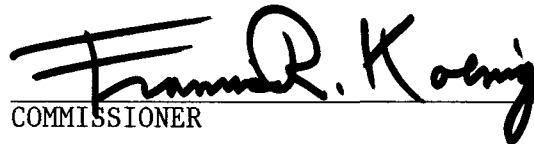
C. That the petition of Lawrence Bradford Perkins, Jr., is granted and the Notice of Deficiency is cancelled.

DATED: Albany, New York
AUG 6 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER