

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
of

Alvin Rosenfeld

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 1970. :

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 16th day of May, 1980, he served the within notice of Decision by certified mail upon Alvin Rosenfeld, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

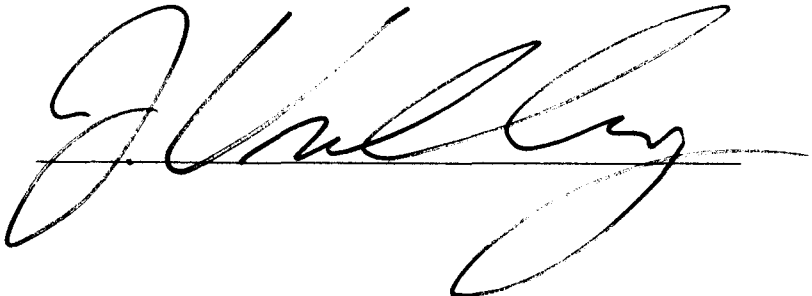
Alvin Rosenfeld
461 W. 44th St.
New York, NY 10036

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
16th day of May, 1980.

Joanne Knapp



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

May 16, 1980

Alvin Rosenfeld
461 W. 44th St.
New York, NY 10036

Dear Mr. Rosenfeld:

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

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
ALVIN ROSENFELD	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Year	:	
1970.	:	

Petitioner, Alvin Rosenfeld, 461 West 44th Street, New York, New York 10036, 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 1970 (File No. 16810).

A small claims hearing was held before William Valcarcel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 24, 1979 at 1:15 P.M. Petitioner appeared pro se. The Audit Division appeared by Peter Crotty, Esq. (Irwin Levy, Esq., of counsel).

ISSUE

Whether petitioner is subject to a penalty pursuant to section 685(g) of the Tax Law as a person who willfully failed to collect, truthfully account for, and pay over, withholding taxes.

FINDINGS OF FACT

1. Henry Rosenfeld Industries, Inc. (the corporation) failed to remit personal income taxes withheld of \$632.40 for the period April 1, 1970 to August 21, 1970.

2. On December 27, 1971, the Income Tax Bureau issued a Notice of Deficiency, in the sum of \$632.40, imposing a penalty in accordance with

section 685(g) of the Tax Law against petitioner, Alvin Rosenfeld. Subsequently, a final distribution of the assets of the corporation (a bankrupt) was made and a payment was remitted in the amount of \$251.06. On September 30, 1976, the Income Tax Bureau abated and reduced the penalty imposed by \$251.06, leaving a net deficiency due of \$381.34.

3. Petitioner was employed as sales manager by Henry Rosenfeld Industries, Inc. He was also the secretary-treasurer of the corporation with the authority to sign payroll checks.

4. Petitioner contended that he had no voice or authority in the financial, operational and managerial functions of the corporation. He further contended that he was not a stockholder in the corporation and that his sole responsibility was selling.

5. Petitioner contended he signed a written contract which outlined the terms and conditions of his employment; however, he did not submit a copy of the employment contract, or any other documentary evidence.

CONCLUSIONS OF LAW

A. That petitioner, Alvin Rosenfeld, has failed to sustain the burden of proof, as required by section 689(e) of the Tax Law, in establishing that as secretary-treasurer he was not under a duty to collect, truthfully account for, and pay over personal income taxes withheld from the employees of Henry Rosenfeld Industries, Inc. during the year 1970.

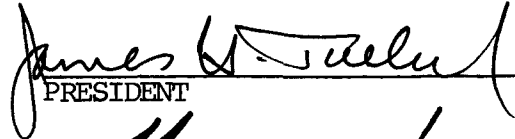
B. That petitioner, Alvin Rosenfeld, was a person who willfully failed to collect, truthfully account for, and pay over personal income taxes withheld by Henry Rosenfeld Industries, Inc. during tax year 1970 and is subject to a penalty, in accordance with the meaning and intent of sections 685(g) and 685(n) of the Tax Law.


C. That the petition of Alvin Rosenfeld is denied and the Notice of Deficiency issued December 27, 1971 as modified by the Audit Division (Finding of Fact "2", supra) is sustained.

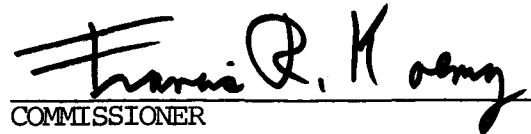
DATED: Albany, New York

MAY 16 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER