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STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A  
STATE CAMPUS

ALBANY, N. Y. 12227

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION

NORMAN F. GALLMAN, PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

STATE TAX COMMISSION  
HEARING UNIT

EDWARD ROOK  
SECRETARY TO  
COMMISSION

ADDRESS YOUR REPLY TO

**DATED:** Albany, New York  
**March 27, 1973**

**Betty Lotto**  
**5105 Foster Avenue**  
**Brooklyn, New York 11203**

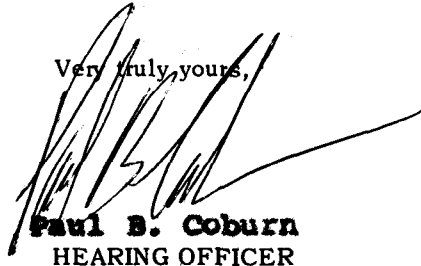
**Dear Mrs. Lotto:**

Please take notice of the **DECISION** of  
the State Tax Commission enclosed herewith.

Please take further notice that pursuant to **section 690 of**  
the Tax Law any proceeding in court to review an adverse decision  
must be commenced within **4 months** after  
the date of this notice.

Any inquiries concerning the computation of tax due or refund allowed  
in accordance with this decision or concerning any other matter relat-  
ing hereto may be addressed to the undersigned. These will be referred  
to the proper party for reply.

Very truly yours,



**Paul B. Coburn**  
HEARING OFFICER

cc Petitioner's Representative  
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
BETTY LOTTO : DECISION  
for Redetermination of Deficiency or :  
for Refund of Personal Income Tax under :  
Article 22 of the Tax Law for the Year :  
1967. :

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Petitioner, Betty Lotto, has filed a petition for redetermination of deficiency or for refund of personal income tax for the year 1967. (File No. 11-2013849). A formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York, on January 26, 1973, at 9:00 A.M. Petitioner appeared pro se. The Income Tax Bureau appeared by Saul Heckelman, Esq., (Solomon Sies, Esq., of Counsel).

ISSUE

Was petitioner, Betty Lotto, liable for unpaid New York State withholding taxes due from Hercules Wrecking Co., Inc. for the month of June, 1967?

FINDINGS OF FACT

1. Hercules Wrecking Co., Inc. failed to pay over to the Income Tax Bureau, New York State personal income taxes withheld from its employees for the month of June, 1967, in the sum of \$3,435.79. The corporation is presently defunct.

2. On September 29, 1969, the Income Tax Bureau issued a Statement of Deficiency against petitioner, Betty Lotto, equal to the amount of New York State withholding taxes due from Hercules Wrecking Co., Inc. for the month of June, 1967, upon

the grounds that she was a person required to collect, truthfully account for and pay over said taxes, and that she willfully failed to do so. It accordingly issued a Notice of Deficiency against her in the sum of \$3,435.79.

3. Petitioner, Betty Lotto, was president of Hercules Wrecking Co., Inc. during the year 1967. She signed the corporation's monthly return of New York State personal income tax withheld for the month of June, 1967. The amount of tax withheld was \$3,435.79. The return was forwarded to the New York State Income Tax Bureau without payment.

4. Petitioner, Betty Lotto, conceded at the formal hearing that she was a responsible officer of Hercules Wrecking Co., Inc. during the year 1967, but contended that the amount of the deficiency was incorrect. She failed to submit any documentary or other substantial evidence to prove her allegation.

#### CONCLUSIONS OF LAW

A. That petitioner, Betty Lotto, as an officer of Hercules Wrecking Co., Inc. was a person required to collect, truthfully account for and pay over New York State withholding taxes due from said corporation for the month of June, 1967, in accordance with the meaning and intent of sections 674 and 685(1) of the Tax Law.

B. That since petitioner, Betty Lotto, willfully failed or caused Hercules Wrecking Co., Inc. to willfully fail to collect, truthfully account for and pay over New York State withholding taxes due from said corporation for the month of June, 1967, therefore a penalty equal to the total amount of the unpaid withholding taxes was properly assessed against her in accordance with the meaning and intent of section 685(g) of the Tax Law.

C. That the petition of Betty Lotto is denied and the Notice of Deficiency issued September 29, 1969, is sustained.

DATED: Albany, New York  
March 27, 1973

STATE TAX COMMISSION

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COMMISSIONER

*Bruce Mawley*  
COMMISSIONER

*Milton Korne*  
COMMISSIONER