

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

MICHEL FLIEGLER

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY ~~(CERTIFIED)~~ MAIL

For a Redetermination of a Deficiency or
a Refund of Personal Income
Taxes under Article ~~(s)~~ 22 of the
Tax Law for the Year(s) 1968 and 1969.:

State of New York
County of Albany

JANET MACK, being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 8th day of May, 1975, she served the within
Notice of Decision ~~(of Determination)~~ by ~~(certified)~~ mail upon Michel Fliegler

~~(representative)~~ the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mr. Michel Fliegler
60 Rensselaer Drive
Commack, New York 11725

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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the ~~(representative)~~
~~(of)~~ petitioner herein and that the address set forth on said wrapper is the last
known address of the ~~(representative)~~ petitioner.

Sworn to before me this
8th day of May, 1975

Joseph S. VanPatten

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

MICHEL FLIEGLER

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

For a Redetermination of a Deficiency or
a Refund of Personal Income
Taxes under Article ~~(a)~~ 22 of the
Tax Law for the Year(s) 1968 and 1969:

State of New York
County of Albany

JANET MACK, being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 16th day of April, 1975, she served the within
Notice of Decision ~~(or Determination)~~ by (certified) mail upon MICHEL FLIEGLER

~~(representative of)~~ the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows:

Mr. Michel Fliegler
60 Rensselaer Drive
Commack, New York 11725

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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the ~~(representative of)~~
~~of~~ 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

16th day of April, 1975

Katherine D. Manly

Janet Mack

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petitions :
of :
MICHEL FLIEGLER :
for Redetermination of Deficiency or :
for Refund of Personal Income Tax :
under Article 22 of the Tax Law for :
the Years 1968 and 1969. :
:

DECISION

Petitioner, Michel Fliegler, residing at 60 Rensselaer Drive, Commack, New York 11725, has filed a petition for redetermination of deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1968 and 1969. (File Nos. 11-2019753, 11-2034143 and 11-6031737.) 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 November 14, 1972, at 1:15 P.M. and March 2, 1973, at 10:30 A.M. Petitioner appeared pro se. The Income Tax Bureau appeared by Saul Heckelman, Esq., (Francis X. Boylan, Esq., and Solomon Sies, Esq., of counsel).

ISSUE

Is petitioner, Michel Fliegler, liable for unpaid withholding taxes due from Vari-Ohm Electronics, Lebo Electronics Corporation

and J.G. Parts Incorporated for various periods during the years 1968 and 1969?

FINDINGS OF FACT

1. On January 26, 1970, the Income Tax Bureau issued a Statement of Deficiency against petitioner, Michel Fliegler, imposing a penalty in the sum of \$2,048.50 which was equal to the alleged amount of New York State withholding taxes due from Vari-Ohm Electronics Incorporated for the period from October 1, 1968 through April 10, 1969, upon 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. In accordance with the aforesaid Statement of Deficiency, it issued a Notice of Deficiency against him in the sum of \$2,048.50. He did not file a petition with respect to the specific Notice of Deficiency, which was received by him, although he filed petitions with respect to Lebo Electronics Corporation and J.G. Parts Incorporated, which were wholly owned subsidiaries. However, for the purpose of this proceeding, the State Tax Commission will consider said petitions as also being a petition with reference to Vari-Ohm Electronics Corporation.

2. On January 26, 1970, the Income Tax Bureau issued a Statement of Deficiency against petitioner, Michel Fliegler, imposing a penalty in the sum of \$711.40 which was equal to

the alleged amount of New York State withholding taxes due from Lebo Electronics Corporation for the period from October 1, 1968 through April 10, 1969, upon the same grounds as set forth in paragraph "1" above. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency against him in the sum of \$711.40.

3. On January 26, 1970, the Income Tax Bureau issued a Statement of Deficiency against petitioner, Michel Fliegler, imposing a penalty in the sum of \$735.50 which was equal to the alleged amount of New York State withholding taxes due from J.G. Parts Incorporated for the periods from January 1, 1968 to January 31, 1968, and from January 1, 1969 to April 10, 1969, upon the same grounds as set forth in paragraph "1" above. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$735.50.

4. The amount of withholding taxes alleged to be due from Vari-Ohm Electronics Incorporated, Lebo Electronics Corporation and J.G. Parts Incorporated for the periods subsequent to December 31, 1968 were estimated by the Income Tax Bureau, since withholding tax returns for said subsequent periods were never filed by said corporations.

5. Vari-Ohm Electronics Incorporated, Lebo Electronics Corporation and J.G. Parts Incorporated filed petitions under

Chapter XI of the Bankruptcy Act and ceased doing business during the last week of February, 1969. The said corporations did not incur any liabilities for New York State withholding taxes subsequent to the month of February, 1969. The corporations did, however, fail to pay over to the Income Tax Bureau withholding taxes in the following amounts for the periods indicated:

Vari-Ohm Electronics Incorporated

<u>Withholding Tax Period</u>	<u>Amount</u>
October 1 - October 31, 1968	\$ 428.10
November 1 - December 31, 1968	626.40
January 1 - February 24, 1969	<u>650.00</u>
Total	\$1,704.50

Lebo Electronics Corporation

<u>Withholding Tax Period</u>	<u>Amount</u>
October 1 - November 30, 1968	\$212.20
December 1 - December 31, 1968	64.20
January 1 - February 28, 1969	<u>260.00</u>
Total	\$536.40

J.G. Parts Incorporated

<u>Withholding Tax Period</u>	<u>Amount</u>
January 1 - January 31, 1968	\$185.00
January 1 - February 28, 1969	<u>330.00</u>
Total	\$515.00

6. Petitioner, Michel Fliegler, was a principal stockholder of Vari-Ohm Electronics Incorporated. Lebo Electronics Corporation and J.G. Parts Incorporated were wholly owned subsidiaries of Vari-Ohm Electronics Incorporated. Petitioner, Michel Fliegler, was vice-president of all three corporations. He signed corporate

checks. He signed and filed corporate New York State withholding tax returns without payment. He was aware that the obligations of the general creditors were being preferred to the obligations of New York State. He conceded at the formal hearing that he was a responsible officer of said corporations who willfully failed to collect, truthfully account for and pay over corporate withholding taxes due to New York State.

CONCLUSIONS OF LAW

A. That petitioner, Michel Fliegler, as an officer of Vari-Ohm Electronics Incorporated, Lebo Electronics Corporation and J.G. Parts Incorporated was a person required to collect, truthfully account for and pay over New York State withholding taxes due from said corporations in accordance with the meaning and intent of sections 674 and 685(n) of the Tax Law. However, since the corporations filed petitions in bankruptcy and ceased doing business during the last week of February, 1969, he is not liable for any alleged estimated unpaid withholding taxes subsequent to said date.

B. That since petitioner, Michel Fliegler, willfully failed to collect, truthfully account for and pay over New York State withholding taxes due from Vari-Ohm Electronics Incorporated for the period from October 1, 1968 to February 24, 1969, in the sum of \$1,704.50 and due from Lebo Electronics Corporation for the

period from October 1, 1968 to February 26, 1969, in the sum of \$536.40 and due from J.G. Parts Incorporated for the periods from January 1, 1968 to January 31, 1968 and January 1, 1969 to February 28, 1969, in the sum of \$515.00, therefore, a penalty equal to the amounts of said unpaid withholding taxes should be assessed against him in accordance with the meaning and intent of section 685(g) of the Tax Law.

C. That the petitions of Michel Fliegler are granted to the extent of reducing the penalties imposed pursuant to section 685(g) of the Tax Law from \$2,048.50 to \$1,704.50 with reference to Vari-Ohm Electronics Incorporated and from \$711.40 to \$536.40 with reference to Lebo Electronics Corporation and from \$735.50 to \$515.00 with reference to J.G. Parts Incorporated; that the Income Tax Bureau is hereby directed to accordingly modify the notices of deficiency issued January 26, 1970; and, that except as so granted, the petitions are in all other respects denied.

DATED: Albany, New York
April 16, 1975

STATE TAX COMMISSION

PRESIDENT

Bruce Maule

COMMISSIONER

Milton Koenig

COMMISSIONER

AD 32 (8-74) 50M

STATE OF NEW YORK

Department of Taxation and Finance

STATE CAMPUS

ALBANY, N. Y. 12227



REASON CHECKED

Unclaimed Refused

Address unknown

Insufficient Address

No such street

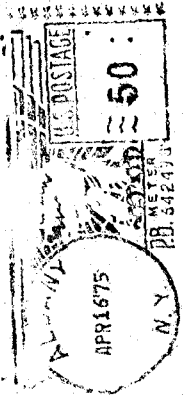
Post office in

Not recognized

D. R. Koch

Mr. Michel Fliegler
 60 Rensselaer Drive
 Commack, New York 11725

CERTIFIED
 No. 201491
MAIL



Name 4-18-75

1st Notice 4-13-75

2nd Notice 5-5-75

Return 184

DS# 103-20-0077
Check - no better address