

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

SCHMIEL KURTZ a/k/a CHIEL KURTZ

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)~~ 1970

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 2nd day of April, 1975, she served the within  
Notice of Decision ~~(or Redetermination)~~ by (certified) mail upon Schmiel Kurtz

~~(representative of)~~ the petitioner in the within

proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Mr. Schmiel Kurtz

a/k/a Chiel Kurtz  
1630-53rd Street

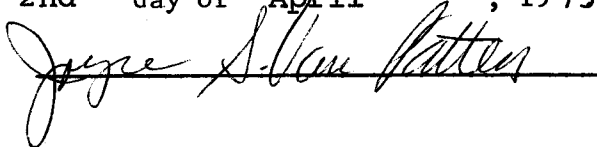
Brooklyn, New York 11204

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)~~  
~~(or)~~ 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

2nd day of April, 1975







STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
SCHMIEL KURTZ a/k/a CHIEL KURTZ : DECISION  
for a Redetermination of Deficiency or :  
for Refund of Personal Income Tax :  
under Article 22 of the Tax Law for the :  
Year 1970. :

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Petitioner, Schmiel Kurtz a/k/a Chiel Kurtz, has filed a petition for redetermination of deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1970 (File No. 11-2044261). A formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on November 20, 1974, at 2:45 P.M. Petitioner appeared pro se. The Income Tax Bureau appeared by Saul Heckelman, Esq. (James Scott, Esq. of Counsel).

ISSUE

Is petitioner, Schmiel Kurtz a/k/a Chiel Kurtz, liable for unpaid New York State withholding taxes due from Kennedy Knitting Mills, Inc. for the year 1970?

FINDINGS OF FACT

1. Kennedy Knitting Mills, Inc. failed to pay over to the Income Tax Bureau, New York State personal income taxes withheld

from its employees during the year 1970 in the sum of \$974.70. The corporation is presently defunct.

2. On July 31, 1972, the Income Tax Bureau issued a Statement of Deficiency against petitioner, Schmiel Kurtz a/k/a Chief Kurtz, imposing a penalty equal to the amount of New York State withholding taxes due from Kennedy Knitting Mills, Inc. for the year 1970 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 \$974.70.

3. Kennedy Knitting Mills, Inc. was incorporated in 1964, It was engaged in the knitting business. Its plant was located at 1451 39th Street, Brooklyn, New York. Mr. Yessaye Levy was the sole stockholder and president of said corporation from 1964 through 1970. He was the chief operating officer of the corporation. He signed the corporate checks and tax returns.

4. Petitioner, Schmiel Kurtz a/k/a Chiel Kurtz, invested \$10,000 in Kennedy Knitting Mills in 1969. He subsequently loaned the corporation an additional \$5,000. He was to eventually receive a one-half interest in the business, if it was successful. He received a salary of \$150 a week from the time that he made the investment in the corporation until March, 1970. He worked part time at the plant doing odd jobs, but was not involved in the day to day financial affairs of the corporation

other than to occasionally take deposits to the bank. He was never elected an officer or director of the corporation. He was never issued any stock certificates of the corporation. He did not sign corporate tax returns. He did not receive any salary after March, 1970. He terminated his relationship with the corporation in June, 1970 when he discovered it was in financial trouble.

CONCLUSIONS OF LAW

A. That petitioner, Schmiel Kurtz a/k/a Chiel Kurtz, was not a responsible officer who willfully failed to collect, truthfully account for, and pay over New York State withholding taxes due from Kennedy Knitting Mills, Inc. for the year 1970, and, therefore a penalty equal to the amount of unpaid withholding taxes should not have been assessed against him in accordance with the meaning and intent of sections 674, 685(g) and 685(n) of the Tax Law.

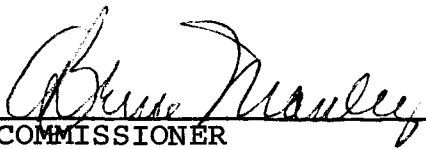
B. That the petition of Schmiel Kurtz a/k/a Chiel Kurtz is granted and the Notice of Deficiency issued July 31, 1972 is cancelled.

DATED: Albany, New York

STATE TAX COMMISSION

April 2, 1975

\_\_\_\_\_  
PRESIDENT

  
\_\_\_\_\_  
COMMISSIONER

  
\_\_\_\_\_  
COMMISSIONER