

STATE OF NEW YORK  
STATE TAX COMMISSION .

In the Matter of the Petition

of  
C. LEONARD ERICKSON, BRIAN ERICKSON:  
JOHN ELSER AND WAYNE J. WHITMER  
For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Personal Income :  
Taxes under Article(s) 22 of the :  
Tax Law for the Year(s) ~~xxxxxx~~ ~~xxxxxx~~ :  
1970 and 1971.

AFFIDAVIT OF MAILING

State of New York  
County of Albany

Bruce Batchelor , 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 12th day of January , 1977, he served the within  
Notice of Decision by (certified) mail upon C. Leonard Erickson

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

Mr. C. Leonard Erickson  
P.O. Box 351  
Salamanca, New York 14779

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)~~  
~~xxxxxx~~ 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  
12th day of January , 1977.

Janet Mack

Bruce Batchelor

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
C. LEONARD ERICKSON, BRIAN ERICKSON :  
JOHN ELSEN AND WAYNE J. WHITMER  
For a Redetermination of a Deficiency or :  
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Taxes under Article(s) 22 of the :  
Tax Law for the Year(s) ~~xxx Period(s)~~ :  
1970 and 1971.

AFFIDAVIT OF MAILING

State of New York  
County of Albany

Bruce Batchelor, 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 12th day of January, 1977, ~~she~~ served the within  
Notice of Decision by (certified) mail upon Brian Erickson

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

Mr. Brian Erickson  
RFD #1, Box 54  
Salamanca, New York 14779

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)~~  
~~xxx 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

12th day of January, 1977.

Bruce Batchelor

Janet Mack

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

C. LEONARD ERICKSON, BRIAN ERICKSON:

AFFIDAVIT OF MAILING

JOHN ELSSEN AND WAYNE J. WHITMER  
For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Personal Income :  
Taxes under Article (s) 22 of the :  
Tax Law for the Year(s) ~~or Period(s)~~ :  
1970 and 1971.

State of New York  
County of Albany

Bruce Batchelor , 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 12th day of January , 1977, she served the within  
Notice of Decision by (certified) mail upon John Elsen  
(~~representative of~~) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Mr. John Elsen  
165 West Avenue  
Salamanca, New York 14779  
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

12th day of January , 1977.

Bruce Batchelor

Janet Mack

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
C. LEONARD ERICKSON, BRIAN ERICKSON:  
JOHN ELSER AND WAYNE J. WHITMER  
For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Personal Income :  
Taxes under Article (x) 22 of the :  
Tax Law for the Year(s) ~~or Period(s)~~ :  
1970 and 1971.

AFFIDAVIT OF MAILING

State of New York  
County of Albany

Bruce Batchelor , 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 12th day of January , 1977, he served the within  
Notice of Decision by (certified) mail upon Wayne J. Whitmer

(~~representative of~~) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Mr. Wayne J. Whitmer  
3 Crosby Drive, RD #1  
Salamanca, New York 14779

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

12th day of January , 1977

Bruce Batchelor

Janet Mack

STATE OF NEW YORK  
STATE TAX COMMISSION.

In the Matter of the Petition

of  
C. LEONARD ERICKSON, BRIAN ERICKSON : AFFIDAVIT OF MAILING  
JOHN ELSER AND WAYNE J. WHITMER  
For a Redetermination of a Deficiency or :  
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Taxes under Article(s) 22 of the :  
Tax Law for the Year(s) ~~or Period(s)~~ :  
1970 and 1971.

State of New York  
County of Albany

Bruce Batchelor , 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 12th day of January , 1977, She served the within  
 Notice of Decision by (certified) mail upon William H. Gardner &  
 David Manch (representative of) the petitioner in the within proceeding,  
 by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
 as follows: William H. Gardner & David Manch, Esqs.  
 Hodgson, Russ, Andrews, Woods & Goodyear  
 1800 One M & T Plaza  
 Buffalo, New York 14203  
 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

12th day of January , 1977.

Bruna Sachdev

Janet Mack



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU  
STATE CAMPUS  
ALBANY, N.Y. 12227

ADDRESS YOUR REPLY TO

January 12, 1977

TELEPHONE: (518) **457-1723**

Mr. C. Leonard Erickson  
P.O. Box 351  
Salamanca, New York 14779

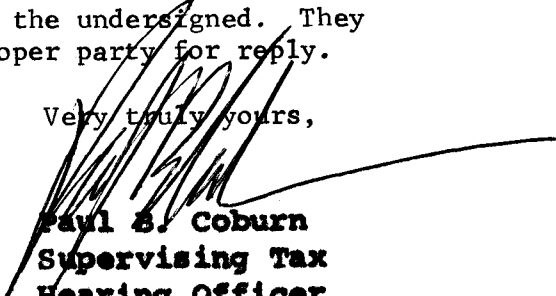
Dear Mr. Erickson:

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

Please take further notice that pursuant to  
Section(x) **690** of the Tax Law, any  
proceeding in court to review an adverse deci-  
sion must be commenced within **4 months**  
from the date of this notice.

Inquiries concerning the computation of tax  
due or refund allowed in accordance with this  
decision or concerning any other matter relative  
hereto may be addressed to the undersigned. They  
will be referred to the proper party for reply.

Very truly yours,

  
**Paul S. Coburn**  
**Supervising Tax**  
**Hearing Officer**

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU  
STATE CAMPUS  
ALBANY, N.Y. 12227

ADDRESS YOUR REPLY TO

January 12, 1977

TELEPHONE: (518) **457-1723**

Mr. Brian Erickson  
RFD #1, Box 54  
Salamanca, New York 14779

Dear Mr. Erickson:

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 deci-  
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Inquiries concerning the computation of tax  
due or refund allowed in accordance with this  
decision or concerning any other matter relative  
hereto may be addressed to the undersigned. They  
will be referred to the proper party for reply.

Very truly yours,

**Paul E. Cohen**  
Supervising Tax  
Hearing Officer

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU  
STATE CAMPUS  
ALBANY, N.Y. 12227

ADDRESS YOUR REPLY TO

January 12, 1977

TELEPHONE: (518) **457-1723**

Mr. John Elsen  
165 West Avenue  
Salamanca, New York 14779

Dear Mr. Elsen:

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

Please take further notice that pursuant to  
Section(x) **690** of the Tax Law, any  
proceeding in court to review an adverse deci-  
sion must be commenced within **4 months**  
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Very truly yours,

**Paul B. Coburn**  
Supervising Tax  
Hearing Officer

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:





STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU  
STATE CAMPUS  
ALBANY, N.Y. 12227

ADDRESS YOUR REPLY TO

January 12, 1977

TELEPHONE: (518) **457-1723**

Mr. Wayne J. Whitmer  
3 Crosby Drive, RD #1  
Salamanca, New York 14779

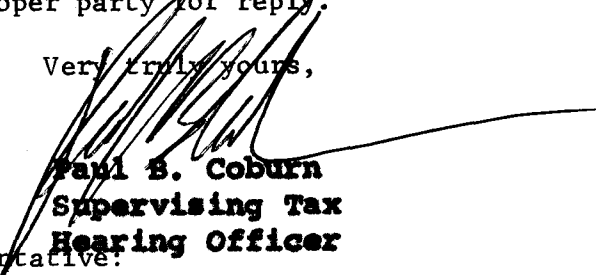
Dear Mr. Whitmer:

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will be referred to the proper party for reply.

Very truly yours,

  
**Paul B. Coburn**  
**Supervising Tax**  
**Hearing Officer**

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

## STATE TAX COMMISSION

A formal hearing was held at the offices of the State Tax Commission, Buffalo, New York, on September 10, 1974, before L. Robert Leisner, Hearing Officer. The taxpayers were represented by William H. Gardner, Esq. and David Manch, Esq. and the Income Tax Bureau was represented by Saul Heckelman, Esq. (James Scott, Esq. of counsel).

Were the applicants liable as responsible persons for withheld income taxes on payrolls of Fancher Furniture Company?

FINDINGS OF FACT

1. Petitioners, C. Leonard Erickson, Brian Erickson, John Elsen and Wayne J. Whitmer, were officers or employees of Fancher Furniture Company, Inc.

2. A Notice of Determination of deficiencies for failure to withhold income taxes from the payrolls of Fancher Furniture Company for the years 1970 and 1971, was issued on February 28, 1972, against the taxpayers under File No. 16-0428360.

3. The taxpayers petitioned for redetermination of the deficiencies.

4. With respect to January, 1971, it was asserted on brief that notices of assessment had not covered January, 1971.

5. No returns were filed by Fancher or the parties herein for those periods and accordingly assessments of \$829.14 against them do not have a time limit. The Notice of Hearing, as well as correspondence indicating \$829.14 for January 1 through January 21, 1971, is in the record, covered these periods and evidence was taken thereon at the hearing.

6. The assessments in controversy were reduced to \$1,978.65 for the period December 15 through December 30, and to \$829.14 for the period January 1 through January 21, 1971.

7. John F. Elsen's duty was to take charge of Fancher's manufacturing and he had no duties in connection with payrolls or finances.

8. Brian Erickson's work dealt with sales and sales promotion and he had no duties in connection with Fancher's payrolls or finances.

9. C. Leonard Erickson was the president of Fancher and his responsibilities included payrolls and taxes or the delegation of the duties to fulfill those responsibilities.

10. Wayne J. Whitmer was a corporate officer and he also had responsibility and control over the Fancher payrolls and taxes.

11. On January 21, 1971, Fancher Furniture Company filed a petition in Bankruptcy under Chapter X of the Federal Bankruptcy Act.

12. On January 25, 1971, the trustees of the Bankrupt Fancher, by a check No. 901 bearing the same date, paid the New York State withholding tax by a check for the first weeks of January in the amount of \$1,480.81.

13. The \$829.14 amount owing for January, 1971, was for the following payroll periods:

week ending	January 15, 1971	\$583.47
"	" January 22, 1971	225.17
"	" January 29, 1971	<u>20.50</u>
		\$829.14

and the payrolls were generally paid the following Friday, almost a week later.

14. The Federal Court, on secured creditors' objections, refused to allow further tax payments after January 21, 1971, the date of bankruptcy, when funds were raised by a certificate of indebtedness to pay costs of administration.

CONCLUSIONS OF LAW

A. John F. Elsen and Brian Erickson had no duties in connection with payrolls in any event, and they were not responsible for the withholding taxes. John F. Elsen and Brian Erickson are not liable for any withholding taxes herein.

B. The applicants sent a check for \$1,480.81 for Fancher for the first two weeks, January 1 and January 8, 1971.

C. The taxes and returns for the last half of December, 1970, were not due until January 31, 1971. Fancher was declared bankrupt before then and the applicants were barred from paying those 1970 taxes in the amount of \$1,978.65.

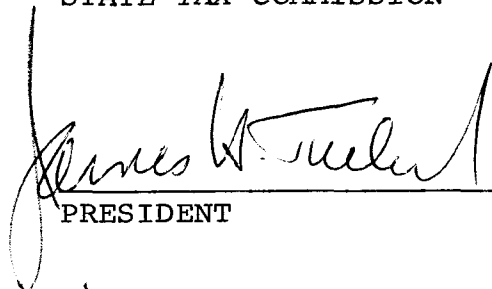
D. The payroll taxes for the first half of January were paid by the check for \$1,480.81. The payroll taxes for the last half of January, 1971 in the amount of \$829.14 were for payrolls of the bankrupt and the applicants were powerless to pay the taxes when barred by the Federal Court.

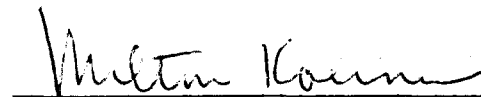
E. The applicants, C. Leonard Erickson and Wayne J. Whitmer, would ordinarily be liable as the responsible corporate officers. But having paid the withholding taxes for the first two weeks of January and having been subsequently barred by the bankruptcy court from paying the last three weeks of January, 1971 and the last three weeks of December, 1970, they are not liable for the withholding taxes here in question, namely, the withholding taxes for the last three weeks of 1970 and the last three weeks of January, 1971.

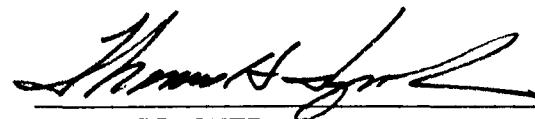
F. It is determined there are no deficiencies or penalties against the applicants for withholding taxes for the periods in issue in this case.

DATED: Albany, New York  
January 12, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

TAX APPEALS BUREAU

STATE CAMPUS  
ALBANY, N.Y. 12227

STATE TAX COMMISSION

ADDRESS YOUR REPLY TO

January 12, 1977

TELEPHONE: (518) 457-1723

Mr. Wayne J. Whitmer  
3 Crosby Drive, RD #1  
Salamanca, New York 14779

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Section(§) 690 of the Tax Law, any  
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cc: Petitioner's Representative:

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## ISSUE

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FINDINGS OF FACT

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and the payrolls were generally paid the following Friday, almost a week later.

14. The Federal Court, on secured creditors' objections, refused to allow further tax payments after January 21, 1971, and to issue a certificate of indebtedness to pay costs of administration.

CONCLUSIONS OF LAW

A. John F. Elsen and Brian Erickson had no duties in connection with payrolls in any event, and they were not responsible for the withholding taxes. John F. Elsen and Brian Erickson are not liable for any withholding taxes herein.

B. The applicants sent a check for \$1,480.81 for Fancher for the first two weeks, January 1 and January 8, 1971.

C. The taxes and returns for the last half of December, 1970, were not due until January 31, 1971. Fancher was declared bankrupt before then and the applicants were barred from paying those 1970 taxes in the amount of \$1,978.65.

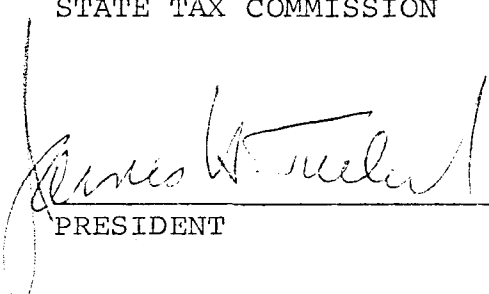
D. The payroll taxes for the first half of January were paid by the check for \$1,480.81. The payroll taxes for the last half of January, 1971 in the amount of \$829.14 were for payrolls of the bankrupt and the applicants were powerless to pay the taxes when barred by the Federal Court.

E. The applicants, C. Leonard Erickson and Wayne J. Whitmer, would ordinarily be liable as the responsible corporate officers. But having paid the withholding taxes for the first two weeks of January and having been subsequently barred by the bankruptcy court from paying the last three weeks of January, 1971 and the last three weeks of December, 1970, they are not liable for the withholding taxes here in question, namely, the withholding taxes for the last three weeks of 1970 and the last three weeks of January, 1971.

F. It is determined there are no deficiencies or penalties against the applicants for withholding taxes for the periods in issue in this case.

DATED: Albany, New York  
January 12, 1977

STATE TAX COMMISSION



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PRESIDENT



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COMMISSIONER



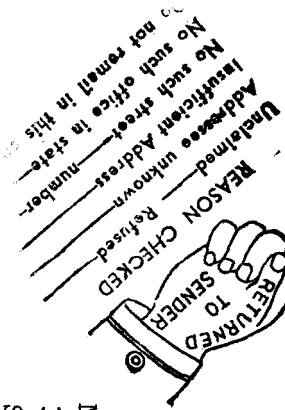
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COMMISSIONER

TA-26 (4-76) 25M

STATE OF NEW YORK  
Department of Taxation and Finance  
TAX APPEALS BUREAU

STATE CAMPUS  
ALBANY, N. Y. 12227



Mr. Wayne J. Whitmer  
3 Crosby Drive, RD #1  
Salamanca, New York 14779

