

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
JENS JOHANSEN A/K/A ERIC J. JOHANNSSEN : AFFIDAVIT OF MAILING
A/K/A UWE J. JOHANNSSEN :
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) :
1973 and 1974.

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 25th day of January , 1977 , she served the within
Notice of Decision by (certified) mail upon Jens Johansen A/K/A
Eric J. Johannsen A/K/A Uwe J.
Johannsen ~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Jens Johansen A/K/A
Eric J. Johannsen A/K/A
Uwe J. Johannsen
868 Ellicott Creek Road
Tonawanda, New York 14150
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

25th day of January , 1977.

Bruce Batchelor

Jane 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 25, 1977

TELEPHONE: (518) 457-1723

Jens Johanseb A/K/A
Eric J. Johannsen A/K/A
Uwe J. Johannsen
868 Ellicott Creek Road
Tonawanda, New York 14150

Dear Mr. Johansen:

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

Please take further notice that pursuant to
Section(9) **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,
Frank J. Puccia
FRANK J. PUCCIA
SUPERVISOR OF
SMALL CLAIMS HEARINGS

Enc.

cc: ~~Petitioner's Representative~~

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
JENS JOHANSEN A/K/A ERIC J. JOHANNSEN	:	DECISION
A/K/A UWE J. JOHANNSEN	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Taxes	:	
under Article 22 of the Tax Law for	:	
the Years 1973 and 1974.	:	

Petitioner, Jens Johansen a/k/a Eric J. Johannsen a/k/a Uwe J. Johannsen, residing at 868 Ellicott Creek Road, Tonawanda, New York 14150, has filed a petition for redetermination of a deficiency or for refund of personal income taxes under Article 22 of the Tax Law for the years 1973 and 1974. (File No. 16-0979364).

A small claims hearing was held September 17, 1976 at 10:45 A.M. at the offices of the State Tax Commission, 65 Court Street, Buffalo, New York, before Harry Huebsch, Hearing Officer. The petitioner appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq., (Alexander Weiss, Esq., of counsel).

ISSUE

Was petitioner, Jens Johansen a/k/a Eric J. Johannsen a/k/a Uwe J. Johannsen, liable for unpaid New York State withholding taxes due from Halfway House Restaurant, Inc. for the years 1973 and 1974.

FINDINGS OF FACT

1. Halfway House Restaurant, Inc. failed to pay over to the Income Tax Bureau \$2,005.13 of New York State personal income taxes withheld from it's employees during the years 1973 and 1974.

2. On August 25, 1975, the Income Tax Bureau issued a Notice of Deficiency against petitioner, Jens Johansen a/k/a Eric J. Johannsen a/k/a Uwe J. Johannsen, for a penalty equal to the amount of New York State withholding taxes due from Halfway House Restaurant, Inc. for 1973 and 1974 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.

3. Halfway House Restaurant, Inc., located in Williamsville, New York, was solely owned by James Williams. The corporation operated a restaurant and bar in space leased in a motel. The corporation was in serious financial difficulty and the owner entered into negotiations for the sale of Halfway House Restaurants, Inc. to petitioner, Jens Johansen, and his co-investor, Charles Mangione. The sale was contingent upon the obtaining of a liquor license by the purchasers.

4. During the negotiations it was verbally agreed that petitioner, Jens Johansen, would be hired in a managerial capacity. Petitioner, Jens Johansen, considered this arrangement beneficial in that it would enable him to gain practical experience in the operation of the restaurant and bar.

He had no knowledge in this field. His previous employment was in an unrelated field as an employee of National Cash Register, Inc.

5. Petitioner, Jens Johansen, was employed in a general supervisory capacity to handle the day-to-day operation of the restaurant and bar. He worked from 8:00 A.M. to 4:00 P.M. and was paid \$250.00 a week. He had the limited authority to sign checks for food and merchandise received when the owner, James Williams, was not available. Petitioner, Jens Johansen, was not permitted to authorize or sign checks in payment of creditors or for taxes. There was a full-time bookkeeper who handled any accounting functions.

6. Petitioner, Jens Johansen, never invested in Halfway House Restaurant, Inc. He was not an officer of said corporation. He did not own stock in the corporation. Petitioner, Jens Johansen, left employment at Halfway House Restaurant, Inc. when it became evident that a liquor license could not be obtained by himself or Charles Mangione because of insufficient investment capital.

CONCLUSIONS OF LAW

A. That petitioner, Jens Johansen, was not a person under a duty to perform the task of collecting and paying over the withholding taxes within the meaning and intent of section 685(n) of the Tax Law.

B. That since petitioner, Jens Johansen, did not willfully fail to cause Halfway House Restaurant, Inc. to

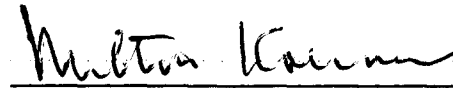
willfully fail to collect, truthfully account for and pay over New York State withholding taxes due from said corporation for the years 1973 and 1974, a penalty equal to the total amount of unpaid withholding taxes was improperly assessed against him in accordance with the meaning and intent of section 685(g) of the Tax Law.

C. That the petition of Jens Johansen a/k/a Eric J. Johannsen a/k/a Uwe J. Johannsen is granted and the Notice of Deficiency is cancelled.

DATED: Albany, New York
January 25, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER