

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JOSEPH HARRY NYBERG

AFFIDAVIT OF MAILING

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 ~~xxxxxx~~ Period ~~(x)~~
July 1, 1973 through July 31, 1973.

State of New York
County of Albany

John Huhn, 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 29th day of September, 1977, ~~he~~ served the within
Notice of Decision by (certified) mail upon Joseph Harry Nyberg

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

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. Joseph Harry Nyberg
2946 Chester Street
Oceanside, New York

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)~~
~~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
29th day of September, 1977.

Janet Mack

John Huhn

STATE OF NEW YORK
STATE TAX COMMISSION

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For a Redetermination of a Deficiency or
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of **Personal Income**
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~~he~~ is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 29th day of September, 1977, ~~he~~ served the within
Notice of Decision by (certified) mail upon Harold Goerlich

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

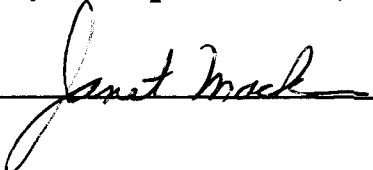
as follows: Harold Goerlich, Esq.
380 North Broadway
Jericho, New York 11753

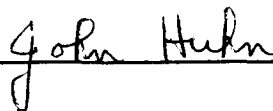
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(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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

29th day of September, 1977.







STATE OF NEW YORK
STATE TAX COMMISSION
TAX APPEALS BUREAU
ALBANY, NEW YORK 12227

September 29, 1977

JAMES H. TULLY JR., PRESIDENT
MILTON KOERNER
THOMAS H. LYNCH

**Mr. Joseph Harry Myberg
2946 Chester Street
Oceanside, New York**

Dear Mr. Myberg:

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

You have now exhausted your right of review at the administrative level. Pursuant to section **(b) 690** of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within **4 months** from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,

Joseph Chyrywat
**Joseph Chyrywat
Hearing Examiner**

cc: Petitioner's Representative
Taxing Bureau's Representative

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
of
JOSEPH HARRY NYBERG
for Redetermination of Deficiency or for
Refund of Personal Income Taxes under
Article 22 of the Tax Law for the Period
July 1, 1973 through July 31, 1973.

DECISION

Petitioner, Joseph Harry Nyberg, 2946 Chester Street, Oceanside, New York, has filed a petition for redetermination of deficiency or for refund of personal income taxes under Article 22 of the Tax Law for the period July 1, 1973 through July 31, 1973. (File No. 10503).

A small claims hearing was held before Joseph Chyrywaty, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on April 26, 1977, at 2:45 p.m. Petitioner appeared with his representative, Harold Goerlich, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Abraham Schwartz, Esq. of counsel).

ISSUE

Whether the petitioner was subject to the penalties imposed under section 685(g) of the Tax Law for the period July 1, 1973 through July 31, 1973.

FINDINGS OF FACT

1. On July 28, 1975, the Income Tax Bureau issued a Notice of Deficiency against the petitioner in the sum of \$193.64. The deficiency was issued on the grounds that the petitioner was subject to penalties imposed in accordance with section 685(g) of the Tax Law for the nonpayment of withholding taxes by General Elevator Corp. for the period July 1 through July 31, 1973.

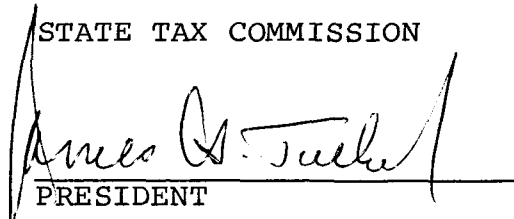
2. During July 1973, the petitioner was an employee, an officer and a 40% shareholder of Hydraulic Elevator and Machine Co., Inc. which wholly owned General Elevator Corp.

CONCLUSIONS OF LAW

A. That the petitioner was a person required to collect, truthfully account for and pay over New York State withholding taxes due from General Elevator Corp. and that he willfully failed to do so in accordance with the meaning and intent of sections 685(g) and 685(n) of the Tax Law.

B. That the petition of Joseph Harry Nyberg is denied and the Notice of Deficiency issued July 28, 1975, is sustained.

DATED: Albany, New York
September 29, 1977

STATE TAX COMMISSION

PRESIDENT


COMMISSIONER


COMMISSIONER