

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
HERMAN KROLL

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of **Personal Income Tax** :  
Taxes under Article ~~(x)~~ 22 of the :  
Tax Law for the Year ~~(x)xxxx Period(x)~~ 1971.:

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 20 day of September , 1978 , he served the within  
notice of decision by (certified) mail upon Herman Kroll  
~~(representative of)~~ the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Herman Kroll  
R.R. #1, Box 45, West Circle  
Bedford, New York 10506

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)~~ petitioner.

Sworn to before me this  
20 day of September , 1978.

*[Signature]*

*John Huhn*



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

September 20, 1978

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

**Herman Kroll**  
**R.R. #1, Box 45, West Circle**  
**Bedford, New York 10506**

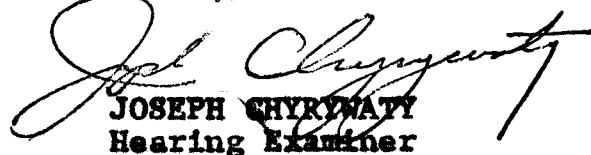
**Dear Mr. Kroll:**

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 **(X) 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 CHYRYWATY**  
**Hearing Examiner**

~~XXXXXXXXXXXXXXXXXXXX~~

Taxing Bureau's Representative

STATE OF NEW YORK  
STATE TAX COMMISSION

---

In the Matter of the Petition  
of  
HERMAN KROLL  
for Redetermination of a Deficiency or  
for Refund of Personal Income Tax under  
Article 22 of the Tax Law for the Year  
1971.

DECISION

---

Petitioner, Herman Kroll, Box 45, West Circle, Bedford, New York 10506, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the Year 1971 (File No. 13803).

A small claims hearing was held before Philip Mercurio, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on July 12, 1977 at 1:15 P.M. Petitioner appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq. (Frank Levitt, Esq., of counsel).

ISSUES

I. Whether petitioner was subject to a penalty pursuant to section 685(g) of the Tax Law as a person who failed to collect, truthfully account for and pay over New York State withholding taxes due from Book Printers, Inc. for the period December 1, 1971 to December 15, 1971.

II. Whether New York State's failure to file a claim in bankruptcy for withholding taxes due from Book Printers, Inc. barred the Income Tax Bureau from asserting a penalty against petitioner under section 685(g) of the Tax Law.

FINDINGS OF FACT

1. On August 26, 1974, the Income Tax Bureau issued a Statement of Deficiency and a Notice of Deficiency against petitioner, Herman Kroll, imposing a penalty equal to the amount of unpaid New York State withholding taxes due from Book Printers, Inc. for the period December 1, 1971 to December 15, 1971.

2. Petitioner was president of Book Printers, Inc. He was authorized to sign checks and did so. The stock of the aforesaid corporation was primarily owned by petitioner and other family members.

3. On or about April 30, 1970, the stock of Book Printers, Inc. was sold by the stockholders to Barnes International Publishing Corporation in exchange for Barnes International Publishing Corporation stock. Book Printers, Inc. became a wholly-owned subsidiary of Barnes International Publishing Corporation. However, petitioner remained the president of Book Printers, Inc.

4. On or about January 3, 1971, a substantial amount of machinery and equipment of Book Printers, Inc. was sold to Mamaroneck Press Inc; however, the corporate name Book Printers, Inc. was not sold at that time. Petitioner maintained that approximately six months after this transaction, he was relieved of his duties as president of Book Printers, Inc. and became general

manager and vice-president of the Pickwick Corporation, a wholly-owned subsidiary of Book Printers, Inc.

5. Petitioner stated that in or about February of 1972, Barnes International Publishing Corporation sold the name and the remaining assets of Book Printers, Inc. to Mamaroneck Press, Inc., at which time petitioner became an employee of Mamaroneck Press, Inc.

6. Petitioner maintained that during the period in question, he was not in a decision making position and was not involved with the financial activities of Book Printers, Inc.

7. Petitioner contended that he should not be held liable for a penalty under section 685(g) of the Tax Law with respect to unpaid withholding taxes due from Book Printers, Inc. He argued that this was so because: (a) Book Printers, Inc. had been adjudicated as bankrupt in February 1972; (b) the State had been advised of the bankruptcy by the court, by the trustee in bankruptcy and by the petitioner, and (c) the trustee in bankruptcy had funds available to pay any New York State withholding tax due if the Income Tax Bureau had filed a claim in bankruptcy for said withholding taxes. In further support of his contention, petitioner introduced into evidence (at the hearing) his undated letter to the Income Tax Bureau, which was received by the Bureau on December 2, 1974. In this letter, he indicated that the name and address of the trustee in bankruptcy had been sent to the Income Tax Bureau three or four times within the last

few months, that Book Printers, Inc. had been discharged of bankruptcy by the United States District Court and that the bankruptcy proceedings were completed in July of 1974.

CONCLUSIONS OF LAW

A. That petitioner has not sustained the burden of proof required to show that he was not a responsible person required to collect, truthfully account for and pay over New York State withholding taxes of Book Printers, Inc. for the period December 1, 1971 to December 15, 1971, in accordance with the meaning and intent of section 685(n) of the Tax Law.

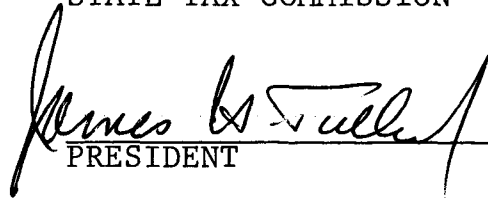
B. That petitioner has not sustained the burden of proof required to show that he did not willfully fail, or cause Book Printers, Inc. to willfully fail to collect, account for or pay over New York State withholding taxes due from said corporation. Therefore, petitioner was subject to the penalty imposed against him in accordance with the meaning and intent of section 685(g) of the Tax Law.

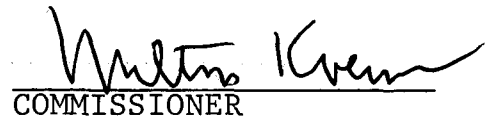
C. That the liability of Book Printers, Inc. for withholding taxes due and the liability of petitioner for a penalty under section 685(g) of the Tax Law are separate and distinct. Any failure by the Income Tax Bureau to collect withholding taxes due from said corporation through bankruptcy proceedings is not relevant to petitioner's liability. Therefore, the Income Tax Bureau was not barred from asserting a penalty against petitioner under section 685(g) of the Tax Law.

D. That the petition of Herman Kroll is denied and the Notice of Deficiency issued on August 26, 1974 in the sum of \$265.30 is sustained.

DATED: Albany, New York  
September 20, 1978

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER