

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

EDWARD ALCOSSER

AFFIDAVIT OF MAILING

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) ~~xx Periode(s)~~ :
1970 and 1971.

State of New York
County of Albany

John Huhn , 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 August , 1978, ~~she~~ served the within
Notice of Decision by (certified) mail upon Edward Alcosser

(~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. Edward Alcosser
19 Brand Drive
Huntington, New York 11743

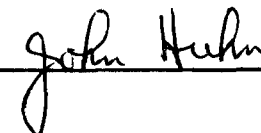
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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 August , 1978





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STATE TAX COMMISSION

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EDWARD ALCOSSER

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For a Redetermination of a Deficiency or :
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State of New York
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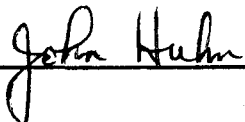
John Huhn , being duly sworn, deposes and says that
he is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 25th day of August , 19 78, he served the within
Notice of Decision by (certified) mail upon Myron Raisman
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Myron Raisman, Esq.
Raisman & Raisman
2100 Deer Park Avenue
Deer Park, New York 11729
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 August , 1978.







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

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

August 25, 1978

**Mr. Edward Alcosser
19 Brand Drive
Huntington, New York 11743**

Dear Mr. Alcosser:

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 ~~(a)~~ **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**

cc: Petitioner's Representative
Taxing Bureau's Representative

STATE TAX COMMISSION

In the Matter of the Petition :
of :
EDWARD ALCOSSER : DECISION
for Redetermination of a Deficiency or :
for Refund of Personal Income Tax :
under Article 22 of the Tax Law for :
the Years 1970 and 1971.

A small claims hearing was held before Raymond Siegel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 17, 1977 at 10:45 A.M. Petitioner appeared with Myron Raisman, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Aliza Schwadron, Esq., of counsel).

Whether petitioner was liable under section 685(g) of the Tax Law, for a penalty equal to the amount of unpaid New York State withholding tax due from Alpha-Tech, Inc. for 1970 and 1971.

FINDINGS OF FACT

1. Alpha-Tech, Inc. failed to pay over to the Income Tax Bureau, New York State personal income tax withheld from the wages of its employees for the period January 1, 1970 through December 31, 1970 in the sum of \$1,618.44, and for the period January 1, 1971 through December 31, 1971 in the sum of \$1,633.20.

2. The Income Tax Bureau issued a Statement of Deficiency against petitioner, Edward Alcosser (pursuant to section 685(g) of the Tax Law), for a penalty equal to 100% of the amount of New York State withholding tax due from Alpha Tech, Inc. for 1970 and 1971. This was done on 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. Accordingly, a Notice of Deficiency was issued on July 29, 1974 against petitioner for \$3,251.64.

3. A partial payment made by Alpha-Tech, Inc. on November 4, 1971 of \$250.00 has been applied by the Income Tax Bureau, to reduce the corporation's withholding tax liability for the period January 1, 1970 through December 31, 1971.

4. During 1970 and 1971 and until he resigned in the latter part of December of 1971, petitioner was the president of Alpha-Tech, Inc. He was also a stockholder in Alpha-Tech, Inc. and owned 25% of its corporate stock from October of 1969 until March 1, 1971. Thereafter he owned 16% of Alpha-Tech, Inc.'s corporate stock.

5. As president of Alpha-Tech Inc., petitioner, Edward Alcosser, was responsible for sales contracts, hiring and firing of electronic technical staff and for the technical engineering operations. He had no knowledge of the bookkeeping or recordkeeping details of the business; however, all disbursed checks required the joint signature of the president and the treasurer of the corporation.

6. As president, petitioner, Edward Alcosser, signed the corporation's tax returns for Employer's Return of New York State Personal Income Tax Withheld for the seven calendar quarters from January 1, 1970 through September 30, 1971. The corporation filed an unsigned, undated, employer's return of income tax withheld for the calendar quarter ended December 31, 1971 in the amount of \$150.80, but without payment of this sum.

CONCLUSIONS OF LAW

A. That petitioner, Edward Alcosser, as an officer and shareholder of Alpha-Tech, Inc., was a person required to collect, truthfully account for and pay over New York State withholding taxes due from said corporation for the periods January 1, 1970 through December 31, 1971, in accordance with the meaning and intent of section 685(n) of the Tax Law.

B. That petitioner, Edward Alcosser, willfully failed or caused Alpha-Tech, Inc. to willfully fail to collect, truthfully account for and pay over New York State withholding taxes due from

said corporation for the periods January 1, 1970 to December 31, 1971. Accordingly, a penalty equal to the total amount of unpaid withholding tax for said periods was properly asserted against him in the Notice of Deficiency dated July 29, 1974, in accordance with the meaning and intent of section 685(g) of the Tax Law.

C. That the petition of Edward Alcosser is granted to the extent that the penalty asserted (pursuant to section 685(g) of the Tax Law) in the aforementioned Notice of Deficiency is reduced from \$3,251.64 to \$3,001.64 for the periods January 1, 1970 to December 31, 1971; that the Income Tax Bureau is hereby directed to accordingly modify the Notice of Deficiency issued July 29, 1974, and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York
August 25, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER