

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
DAVID ROSEN

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 Year ~~(xxxxxx)~~ :
1971

State of New York
County of Albany


John Huhn, being duly sworn, deposes and says that
~~she~~ he is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 25 day of May, 1978, she served the within
Notice of Decision by (certified) mail upon David Rosen
(~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: David Rosen
1185 Park Avenue
New York, NY 10028

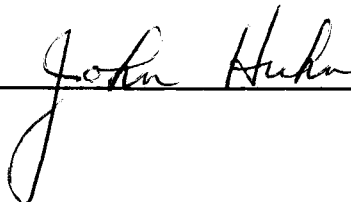
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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

25 day of May, 1978





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
DAVID ROSEN

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article ~~(a)~~ 22 of the :
Tax Law for the Year ~~(a) or Period(s)~~ :
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 25 day of May, 19 78, she served the within
Notice of Decision by (certified) mail upon Jonathan B.
Altschuler (representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Jonathan B. Altschuler
135 West 50th St.
New York, NY 10020

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

25 day of May, 19 78

Michael

John Huhn



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

May 25, 1978

Please address your
reply to:

457-1723

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

David Rosen
1185 Park Avenue
New York, NY 10028

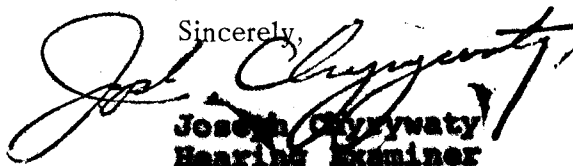
Dear Mr. Rosen:

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(s) **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
Hearing Examiner

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
DAVID ROSEN	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Year	:	
1971.	:	

Petitioner, David Rosen, 1185 Park Avenue, New York, New York 10028, 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. 13384).

A small claims hearing was held before Joseph A. Milack, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 22, 1976 at 10:45 A.M. The petitioner appeared by Jonathan B. Altschuler, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Abraham Schwartz, Esq., of counsel).

ISSUE

Whether petitioner was a responsible person required to collect, truthfully account for and pay over New York State withholding taxes of Aerocon, Inc. for the year 1971.

FINDINGS OF FACT

1. Petitioner, David Rosen, was the president of Aerocon, Inc. from before January 1, 1971 until November 18, 1971, when Aerocon, Inc. was absorbed by Alpha-numeric, Inc. After the merger in November, David Rosen was no longer associated with Aerocon, Inc.

2. On December 28, 1973, the Income Tax Bureau issued a Notice of Deficiency against David Rosen imposing a penalty in the sum of \$4,371.00, the amount of unpaid New York State withholding taxes due from Aerocon, Inc. for the period March 1, 1971 through December 31, 1971. An abatement in the amount of \$1,420.80 was allowed by the Income Tax Bureau (the amount of the deficiency attributable to the period March 1, 1971 through June 30, 1971), reducing the amount allegedly due to \$2,950.20. This amount represented penalty due for the period July 1, 1971 through December 31, 1971.

3. Petitioner alleged that he did not have authority to write checks for Aerocon, Inc. and did not participate in any business functions of said corporation. He also argued that since he was not a corporate officer after the takeover by Alphanumeric, Inc., he should not be liable for the withholding taxes due after November 18, 1971.

4. Petitioner failed to introduce any documentary evidence to show that he did not have the authority to sign checks or manage corporate affairs.

CONCLUSIONS OF LAW

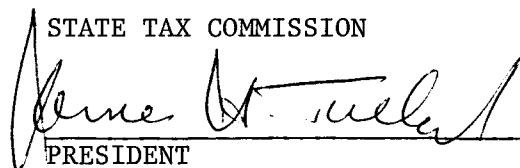
A. That petitioner, David Rosen, was a person required to collect, truthfully account for and pay over New York State withholding taxes due from Aerocon, Inc. for the period July 1, 1971 through November 18, 1971, within the meaning and intent of section 685(n) of the Tax Law, and that he was not such a person after November 18, 1971.

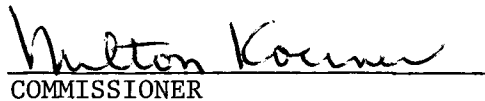
B. That since petitioner failed to collect, truthfully account for and pay over New York State withholding taxes for Aerocon, Inc. for the period January 1, 1971 through November 18, 1971, he is subject to a penalty equal to the amount of withholding tax payable for the aforementioned period, pursuant to section 685(g) of the Tax Law. Therefore, the Income Tax Bureau is directed to modify the

Notice of Deficiency issued December 28, 1973 by eliminating a portion of the penalty equal to the amount of withholding taxes payable for the period November 19, 1971 through December 31, 1971.

C. That the petition of David Rosen is granted to the extent indicated in Conclusion of Law "B," above, and that except as so granted, the petition is in all other respects denied.

DATED: Albany, New York
May 25, 1978

STATE TAX COMMISSION

PRESIDENT


COMMISSIONER


COMMISSIONER



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

May 25, 1978

Please address your
reply to:

457-1723

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

David Rosen
1185 Park Avenue
New York, NY 10028

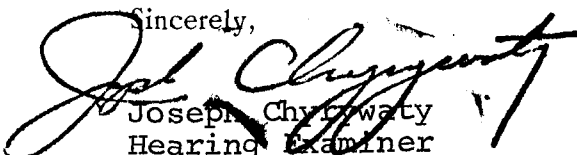
Dear Mr. Rosen:

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(s) 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 Chynoweth
Hearing Examiner

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
DAVID ROSEN	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Year	:	
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CONCLUSIONS OF LAW

A. That petitioner, David Rosen, was a person required to collect, truthfully account for and pay over New York State withholding taxes due from Aerocon, Inc. for the period July 1, 1971 through November 18, 1971, within the meaning and intent of section 685(n) of the Tax Law, and that he was not such a person after November 18, 1971.

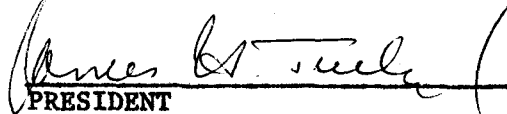
B. That since petitioner failed to collect, truthfully account for and pay over New York State withholding taxes for Aerocon, Inc. for the period January 1, 1971 through November 18, 1971, he is subject to a penalty equal to the amount of withholding tax payable for the aforementioned period, pursuant to section 685(g) of the Tax Law. Therefore, the Income Tax Bureau is directed to modify the

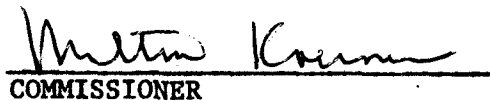
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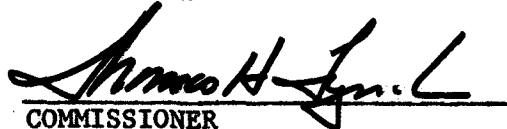
C. That the petition of David Rosen is granted to the extent indicated in Conclusion of Law "B," above, and that except as so granted, the petition is in all other respects denied.

DATED: Albany, New York
May 25, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

TA-26 (4-76) 25M

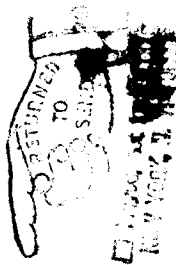
STATE OF NEW YORK

Department of Taxation and Finance

TAX APPEALS BUREAU

STATE CAMPUS

ALBANY, N. Y. 12227



David Rosen
1185 Park Avenue
New York, NY 10028

