

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
SIGMUND SCHATZ

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 ~~(X)~~ ~~1970~~ ~~(X)~~ :
1970.

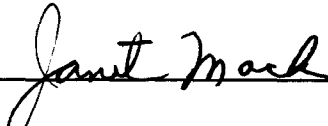
State of New York
County of Albany

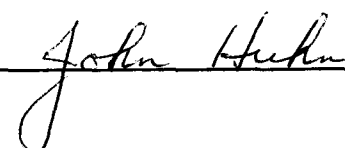
John Huhn , being duly sworn, deposes and says that
he is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 17th day of February , 1978 , he served the within
Notice of Decision by (certified) mail upon Sigmund Schatz
~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Sigmund Schatz
119 State Street
Brooklyn, 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

17th day of February , 19 78







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

February 17, 1978

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

Sigmund Schatz
119 State Street
Brooklyn, New York

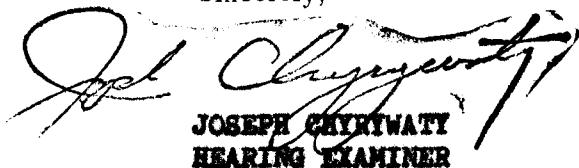
Dear Mr. Schatz:

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 ~~690~~ **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 CHYRTWATY
HEARING EXAMINER

~~XXXXXX Section 690(b)(1) Representation XXXXXX~~

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
SIGMUND SCHATZ : DECISION
for Redetermination of Deficiency or for :
Refund of Personal Income Tax under :
Article 22 of the Tax Law for the Year :
1970. :
:

Petitioner, Sigmund Schatz, residing at 119 State Street, Brooklyn, New York, 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 1970 (File No. 14831).

A small claims hearing was held before Harry Huebsch, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 24, 1977 at 2:45 P.M. Petitioner appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq. (Aliza Schwadron, Esq., of counsel).

ISSUE

Whether petitioner was liable for the penalty imposed against him pursuant to section 685(g) of the Tax Law, with respect to unpaid New York State withholding taxes due from Mavin Frame Carving Corporation for the year 1970.

FINDINGS OF FACT

1. Mavin Frame Carving Corporation failed to pay over to the Income Tax Bureau New York State personal income tax withheld from its employees during the year 1970.
2. On February 24, 1976, the Income Tax Bureau issued a Notice of Deficiency against petitioner, Sigmund Schatz, equal to the amount of New York State withholding

tax due from Mavin Frame Carving Corporation for the year 1970, upon the grounds that he was a person required to collect, truthfully account for and pay over said tax and that he willfully failed to do so.

3. Petitioner contended that pursuant to an oral agreement, Mavin Frame Carving Corporation was taken over by a Mr. Munn early in 1970 and that Mr. Munn agreed to assume responsibility for payment of all personal income tax withheld from employees' wages to the Income Tax Bureau. Petitioner also contended that he became an employee of Mr. Munn in April of 1970 and that Mr. Munn paid the Federal liability resulting from a similar action by the Internal Revenue Service.

4. Petitioner was a shareholder, vice-president and treasurer of Mavin Frame Carving Corporation. No evidence was submitted to show that said corporation either changed ownership or went out of existence in the year 1970. New York State personal income tax was withheld from said corporation's employees during both the first and second half of 1970. Petitioner had the authority to sign checks of said corporation in payment of creditors.

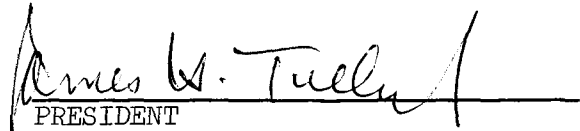
CONCLUSIONS OF LAW

A. That petitioner, Sigmund Schatz, was a person required to collect, truthfully account for and pay over New York State withholding tax due from Mavin Frame Carving Corporation for the year 1970 in accordance with the meaning and intent of section 685(n) of the Tax Law. Since petitioner willfully failed or caused Mavin Frame Carving Corporation to willfully fail to collect, truthfully account for and pay over New York State withholding tax due from said corporation for the year 1970, a penalty equal to the total amount of unpaid withholding tax was properly asserted against him in accordance with the meaning and intent of section 685(g) of the Tax Law.

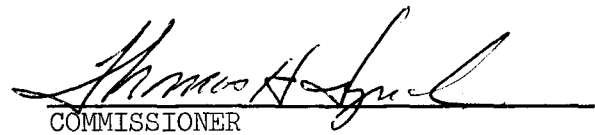
B. That the petition of Sigmund Schatz is denied and the Notice of Deficiency issued February 24, 1976 is sustained.

DATED: Albany, New York
February 17, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER