

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
EMANUEL SCHWARTZ

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(s) ~~XXXXXXXXXX~~ :
1971, 1972 and 1973

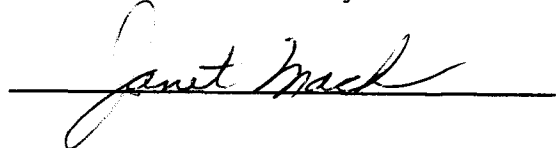
State of New York
County of Albany

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 6th day of February , 1978, she served the within
Notice of Decision by (certified) mail upon Emanuel Schwartz
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Emanuel Schwartz
7 Saul Place
Plainview, Long Island, NY 11803
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

6th day of February , 1978.







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

February 6, 1978

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

Emanuel Schwartz
7 Saul Place
Plainview, Long Island, NY 11803

Dear Mr. Schwartz:

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

You have now exhausted your right of review at the administrative level. Pursuant to section(s) **22 690** 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 Chyrvaty
Hearing Examiner

cc: Petitioner's Representative
~~None~~
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
EMANUEL SCHWARTZ	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Years	:	
1971, 1972 and 1973.	:	

Petitioner, Emanuel Schwartz, residing at 7 Saul Place, Plainview, Long Island, New York 11803, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1971, 1972 and 1973 (File No. 12780).

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 October 18, 1976 at 2:45 P.M. The petitioner appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq. (Paul Rosenkrantz, Esq., of counsel).

ISSUE

Whether the petitioner, Emanuel Schwartz, was a responsible person required to collect, truthfully account for and pay over

New York State withholding taxes of Customode Designs Limited for the periods October 1, 1971 to June 22, 1972 and April 1, 1973 to July 24, 1973.

FINDINGS OF FACT

1. Petitioner, Emanuel Schwartz, was the treasurer of Customode Designs Limited during the periods in issue and had the authority to sign its checks.

2. On June 15, 1973, petitioner signed a letter addressed to Customode Designs Limited stating that he was resigning as an officer of that corporation.

3. Petitioner was a stockholder of Customode Designs Limited throughout the periods in issue. The company filed in bankruptcy on July 24, 1973.

4. Petitioner contended that he was not a responsible officer and was not involved with the internal affairs of said company. He also maintained that the amounts due are incorrect.

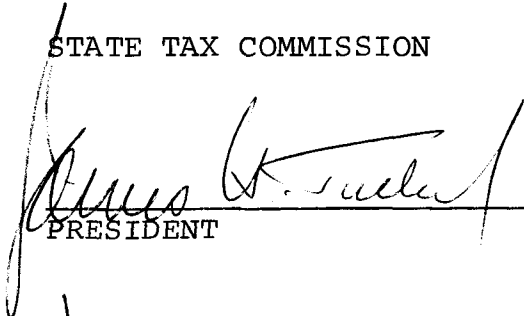
CONCLUSIONS OF LAW

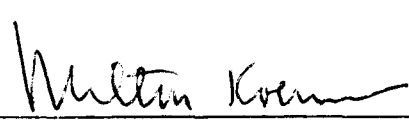
A. That petitioner, Emanuel Schwartz, has not sustained the burden of proof necessary to substantiate that he was not a person required to collect, truthfully account for and pay over to New York State, withholding taxes due from Customode Designs Limited for the periods in issue.

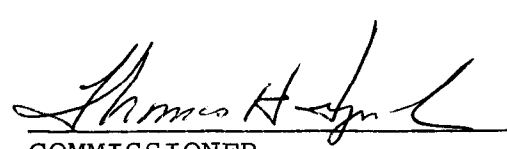
B. That the petition of Emanuel Schwartz is denied and the Notice of Deficiency issued October 28, 1974 in the sum of \$1,690.95 is sustained.

DATED: Albany, New York
February 6, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER