

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
BENJAMIN SCHWARTZBACH

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(s) ~~or Period(s)~~ :  
1970 & 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 13 day of October, 1978, she served the within

Notice of Decision by (certified) mail upon Benjamin  
Schwartzbach

~~(representative of)~~ the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed

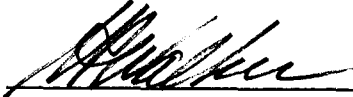
as follows: Benjamin Schwartzbach  
4330 Hillcrest Drive  
Hollywood, Florida 33021

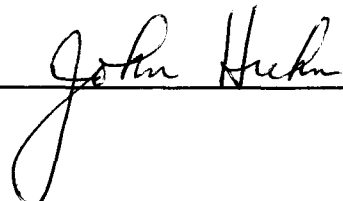
and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the ~~(representative of)~~  
~~xxxxxx~~ 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

13 day of October, 1978.





STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

BENJAMIN SCHWARTZBACH

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) ~~or Period(s)~~ :  
1970 & 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 13 day of October, 1978, she served the within  
Notice of Decision by (certified) mail upon Sidney E. Garber,  
Esq.

(representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Sidney E. Garber, Esq.  
424 Madison Avenue  
New York, NY 10017

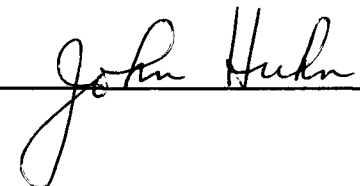
and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Postal Service within the State of New York.

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

13 day of October, 1978.







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

October 13, 1978

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

**Benjamin Schwartzbach  
4330 Hillcrest Drive  
Hollywood, Florida 33021**

**Dear Mr. Schwartzbach:**

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 Chyryaty  
Hearing Examiner**

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

---

In the Matter of the Petition	:	
of	:	
BENJAMIN SCHWARTZBACH	:	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.	:	

---

Petitioner, Benjamin Schwartzbach, 4330 Hillcrest Drive, Hollywood, Florida 33021, 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 1970 and 1971 (File No. 13402).

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 August 30, 1977 at 9:15 A.M. Petitioner appeared by Sidney E. Garber, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Abraham Schwartz, Esq., of counsel).

ISSUE

Whether petitioner was subject to a penalty under 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 Artamount, Inc. for the years 1970 and 1971.

was widely recognized as being associated with said firm. Therefore, he contended that he remained on as president of the firm (in name only) for the purpose of bringing business into the firm.

4. Petitioner contended that the amount of unpaid New York State withholding taxes due from Artamount, Inc. for 1970 was not \$5,859.60. He maintained that an employee incorrectly placed a decimal point and that the amount of \$5,859.60 shown as being withheld for the period December 16, 1970 to December 31, 1970 should have been \$585.96. However, the petitioner did not submit any documentary evidence to substantiate this claim.

5. In a letter dated December 15, 1975, the Income Tax Bureau informed petitioner that its records indicated that "...no withholding tax of Artamount, Inc. was paid after March 30, 1970. Therefore, though the period stated on the Notice of Deficiency for 1970 shows only the month of December, the amount is correct and in order."

#### CONCLUSIONS OF LAW

A. That petitioner, Benjamin Schwartzbach, has not sustained the burden of proof required under section 689(e) of the Tax Law to show that the unpaid New York State withholding taxes due from Artamount, Inc. for 1970 were incorrectly determined by the Income Tax Bureau.

B. That petitioner was a person required to collect, truthfully account for and pay over New York State withholding taxes due from Artamount, Inc. for 1970 and for the period April 1, 1971 through April 9, 1971, within the meaning and intent of section 685(n) of the Tax Law.

C. That since petitioner willfully failed or caused Artamount, Inc. to willfully fail to collect, truthfully account for, and pay over New York State withholding taxes due from said corporation for 1970 and for the period April 1, 1971 through April 9, 1971, he is liable for a penalty of \$5,859.60 for the year 1970 and for a penalty of \$101.57 (9/30ths of \$338.55) for the period April 1, 1971 through April 9, 1971, within the meaning and intent of section 685(g) of the Tax Law.

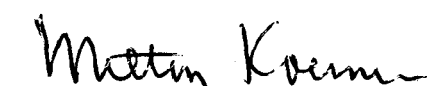
D. That petitioner was not a person required to collect, truthfully account for, and pay over withholding taxes due from Artamount, Inc. after April 9, 1971, within the meaning and intent of section 685(n) of the Tax Law. Therefore, penalties asserted against him under section 685(g) of the Tax Law for the period April 10, 1971 through April 30, 1971 in the amount of \$236.98 and for the period after April 30, 1971 in the amount of \$4,959.58, are cancelled.

E. That the petition of Benjamin Schwartzbach is granted to the extent indicated in Conclusion of Law "D", above; that the Income Tax Bureau is hereby directed to accordingly modify the Notice of Deficiency issued September 24, 1973, and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York  
October 13, 1978

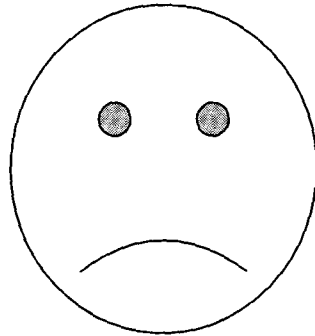
STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER

**CORRECTION  
FOLLOWS**



STATE OF NEW YORK

STATE TAX COMMISSION

---

In the Matter of the Petition	:	
of	:	
BENJAMIN SCHWARTZBACH	:	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.	:	

---

Petitioner, Benjamin Schwartzbach, 4330 Hillcrest Drive, Hollywood, Florida 33021, 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 1970 and 1971 (File No. 13402).

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 August 30, 1977 at 9:15 A.M. Petitioner appeared by Sidney E. Garber, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Abraham Schwartz, Esq., of counsel).

ISSUE

Whether petitioner was subject to a penalty under 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 Artamount, Inc. for the years 1970 and 1971.



FINDINGS OF FACT

1. On September 24, 1973, the Income Tax Bureau issued a Statement of Deficiency and a Notice of Deficiency against petitioner, Benjamin Schwartzbach, imposing a penalty equal to the amount of unpaid New York State withholding taxes due from Artamount, Inc. for the years 1970 and 1971. The Statement of Deficiency indicated a) that the withholding tax periods involved were December 16 to December 31, 1970, April 1 to April 30, 1971, and b) the balance which was due for the 1971 period.

2. For the entire year 1970 and until April 9, 1971, petitioner was an officer and owned fifty percent of the stock of Artamount, Inc. On April 9, 1971 at 1:00 P.M., petitioner sold his stock in the firm. During the period prior to April 9, 1971, petitioner was in complete charge of the managerial, financial and operational functions of the firm and was authorized to sign checks and tax returns.

3. After the sale of his stock in Artamount, Inc., petitioner entered into an employment contract whereby he agreed to continue on as a sales manager and president of the firm. He remained on as president of said firm until August 16, 1971, at which time he resigned. During the period from April 9, 1971 to August 16, 1971, petitioner did not have any authority to make managerial, financial and operational decisions, nor was he authorized to sign checks for large amounts or tax returns. However, he did have the authority to sign "petty cash checks." Since petitioner had been in business for 40 years prior to the sale of his stock in Artamount, Inc., his name

was widely recognized as being associated with said firm. Therefore, he contended that he remained on as president of the firm (in name only) for the purpose of bringing business into the firm.

4. Petitioner contended that the amount of unpaid New York State withholding taxes due from Artamount, Inc. for 1970 was not \$5,859.60. He maintained that an employee incorrectly placed a decimal point and that the amount of \$5,859.60 shown as being withheld for the period December 16, 1970 to December 31, 1970 should have been \$585.96. However, the petitioner did not submit any documentary evidence to substantiate this claim.

5. In a letter dated December 15, 1975, the Income Tax Bureau informed petitioner that its records indicated that "...no withholding tax of Artamount, Inc. was paid after March 30, 1970. Therefore, though the period stated on the Notice of Deficiency for 1970 shows only the month of December, the amount is correct and in order."

#### CONCLUSIONS OF LAW

A. That petitioner, Benjamin Schwartzbach, has not sustained the burden of proof required under section 689(e) of the Tax Law to show that the unpaid New York State withholding taxes due from Artamount, Inc. for 1970 were incorrectly determined by the Income Tax Bureau.

B. That petitioner was a person required to collect, truthfully account for and pay over New York State withholding taxes due from Artamount, Inc. for 1970 and for the period April 1, 1971 through April 9, 1971, within the meaning and intent of section 685(n) of the Tax Law.

C. That since petitioner willfully failed or caused Artamount, Inc. to willfully fail to collect, truthfully account for, and pay over New York State withholding taxes due from said corporation for 1970 and for the period April 1, 1971 through April 9, 1971, he is liable for a penalty of \$5,859.60 for the year 1970 and for a penalty of \$101.57 (9/30ths of \$338.55) for the period April 1, 1971 through April 9, 1971, within the meaning and intent of section 685(g) of the Tax Law.

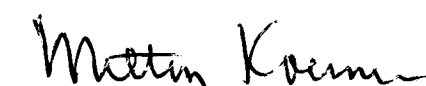
D. That petitioner was not a person required to collect, truthfully account for, and pay over withholding taxes due from Artamount, Inc. after April 9, 1971, within the meaning and intent of section 685(n) of the Tax Law. Therefore, penalties asserted against him under section 685(g) of the Tax Law for the period April 10, 1971 through April 30, 1971 in the amount of \$236.98 and for the period after April 30, 1971 in the amount of \$4,959.58, are cancelled.


E. That the petition of Benjamin Schwartzbach is granted to the extent indicated in Conclusion of Law "D", above; that the Income Tax Bureau is hereby directed to accordingly modify the Notice of Deficiency issued September 24, 1973, and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York  
October 13, 1978

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER