

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

HERBERT L. FISCHER

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)~~ :
1974-1975.

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 April , 1979 , ~~she~~ served the within
Notice of Default by (certified) mail upon Herbert L. Fischer

~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Herbert L. Fischer
23 Bolan Drive
Huntington Station, NY 11746

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)~~
~~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 April , 1979 .

Marilyn J. Papineau

John Huhn



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

ADDRESS YOUR REPLY TO

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

April 6, 1979

TELEPHONE: (518) 457-1723

Herbert L. Fischer
23 Bolan Drive
Huntington Station, NY 11746

Dear Mr. Fischer:

Please take notice of the Default Order
of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to
Section(s) 690 of the Tax Law, any
proceeding in court to review an adverse deci-
sion must be commenced within 4 months,
from the date of this notice.

Inquiries concerning the computation of tax
due or refund allowed in accordance with this
decision or concerning any other matter relative
hereto may be addressed to the undersigned. They
will be referred to the proper party for reply.

Very truly yours,

John F. Koagel

Supervisor of Tax Conferences

Enc.

cc: ~~Petitioner's Representative~~

Taxing Bureau's Representative:

of

DEFAULT ORDER

for Redetermination of Deficiency or for Refund of
Personal Income
Taxes under Article(s) 22 of the Tax Law for the
Year(s) 1974-1975

Petitioner(s) Herbert L. Fischer, 23 Bolan Drive, Huntington Station,
New York 11746 filed a petition for redetermination of deficiency
or for refund of Personal Income taxes under Article(s)
22 of the Tax Law for the year(s) 1974-1975 . File No.(s) 20676

A pre-hearing conference on the petition was scheduled before Joseph J. Olbrych, Conferee, at the offices of the State Tax Commission, New York State Department of Taxation and Finance, Tax Appeals Bureau, Two World Trade Center, Room 65-51, 65th Floor, NY, NY on Tuesday, Sept. 26, 1978 at 2:45 P.M. Notice of said pre-hearing conference was given to petitioner ~~(s) xxxxxxxxxx (s) xxxxxxxxxx~~.

. Petitioner(~~xxxxxx~~) did not appear at the pre-hearing conference . A default has been duly noted.

Now on motion of the attorney for the Department of Taxation and Finance,
it is

ORDERED that the petition of Herbert L. Fischer
be and the same is hereby denied.

DATED: Albany, New York
April 6, 1979

STATE TAX COMMISSION

~~PRESIDENT~~

COMMISSIONER

COMMISSIONER

New York State
Department of
TAXATION
and FINANCE



Date 1/10/80

To John

Commissioner Lynch has denied the
application to vacate the default.
The file is returned herewith.

M-75.1

Paul Coburn
Secretary to the
State Tax Commission

January 10, 1980

Mr. Herbert L. Fischer
23 Bolan Drive
Huntington Station, New York 11746

Dear Mr. Fischer:

Your letter of December 6, 1979, requesting that the Default Order issued against you be vacated was submitted to State Tax Commissioner Thomas H. Lynch for consideration. Commissioner Lynch has ruled that the default will not be opened.

Very truly yours,

151

Paul B. Coburn
Secretary to the State
Tax Commission

cc--Commissioner Lynch
Mr. John J. Sollecito, Director
Tax Appeals Bureau



New York State Department of
TAXATION and FINANCE

MEMORANDUM

AD-53.1 (4/77)

TO: Commissioner Lynch

FROM: Paul B. Coburn

SUBJECT: Herbert L. Fischer

The taxpayer has requested that the default be vacated due to the fact that his automobile broke down on the Long Island Expressway on the day of the hearing.

Please advise if you wish to vacate the default.

If it is vacated, it is my recommendation that it be done upon condition that he appear on a day certain.

PAUL B. COBURN
Secretary to the State Tax Commission

January 2, 1980

*Default will not be opened.
Continuing problem with this taxpayer
& with conflicting excuses given for
several failures to appear.
See J. Fallis memo
attached.*

CERTIFIED MAIL #177200
RETURN RECEIPT REQUESTED

Herbert L. Fischer
23 Bolan Drive
Huntington Sta., N.Y. 11746

December 6, 1979

State Tax Commission
State Campus
Albany, New York

Reference: File No. 20679, 1974 - 1975

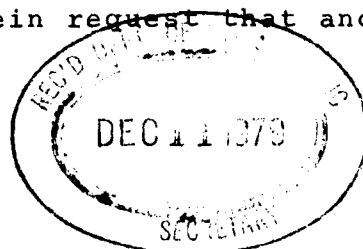
Gentlemen:

On August 11, 1979, I was advised of a prehearing conference relative to income tax, article 22 for tax years 1974 and 1975 (see letter attached). I did appear that day as scheduled and presented documentary evidence to the effect that the taxes claimed due had in fact been paid. The Conferee retained the documents and advised that I would hear further.

On April 6, 1979, the tax commission issued a default order (copy attached) indicating that I failed to appear as required by the August 11, 1978 notice. I contacted my attorney who wrote to the commission on May 31, 1979 (copy attached) requesting a new hearing. An investigation by the commission revealed that I had indeed appeared and a new hearing was scheduled. (See notice dated 10/30/79)

On the morning of November 14, 1979 while enroute to the commission, my car became disabled on the Long Island Expressway and, due to the attendant circumstances, was unable to appear at the scheduled meeting. At 9:00 a.m. on the morning of November 15, I called the conferee, Ms. Kathleen Bernard and was advised by Ms. Corbin that Ms. Bernard was out and would return my call upon her return. Ms. Bernard called me on November 20th and advised that the matter was already forwarded for default proceeding.

I regret that unavoidable circumstances prevented me from attending the scheduled hearing on November 14, and that the situation was beyond my control. Although I recognize that the notice of conference, dated October 30, indicated that no postponement will be granted, I respectfully request such postponement inasmuch as the circumstances were beyond my control and that I acted with proper responsibility as soon as possible. Considering the importance of the matter and the fact that I have documentary evidence in favor of my position, I herein request that another hearing be scheduled.

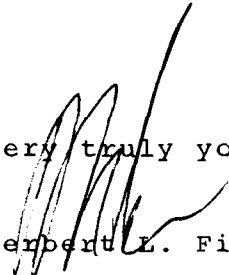


- 2 -

State Tax Commission

November 21, 1979

Thank you for your kind consideration and continued cooperation
in this matter.


Very truly yours,

Herbert L. Fischer

HF:rmf

c.c. R. Leland



New York State Department of
TAXATION and FINANCE

MEMORANDUM

AD-53 (6/76)

TO: John F. Koagel
FROM: John E. Fallis
SUBJECT: HERBERT FISCHER
TAB #'s 20676 & 23918

OFFICE: Tax Appeals Bureau, NY

DATE: December 28, 1979

The attached transmittal of two Defaults and one Agreed Income Tax case is being sent on a separate transmittal because an explanation is needed of what has transpired on these cases.

CASE # 1

Herbert L. Fisher (Tab # 20676) is a withholding penalty case for the periods 7/1/74 to 12/31/74 in the amount of \$912.80 and for the period 5/1/75 to 5/31/75 in the amount of \$677.90. This later period may have been paid per pencil notation (paid 7/30/75). This case was Defaulted by the Commission on April 6, 1979 for failure to appear on September 26, 1978.

This Default Order was lifted per your recommendation (memo dated June 14, 1979) and the case sent to the New York City Conference Unit with instructions that a "Day Certain" appointment be set up. On September 13, 1979 I called Mr. Richard Leland, the taxpayer's representative who had requested the default be lifted. I advised him that a Power of Attorney was needed and that he should advise me of a day in early October 1979 on which a "Day Certain" appointment could be set up. This was confirmed per my letter of the same date. Mr. Leland did not reply to this letter but did call me on October 11, 1979 to explain that he was having trouble getting the power of attorney. I told him that the conference date must be set by the end of that week but that the power of attorney could follow later.

When I received no response I had a final notice prepared, to the taxpayer only, scheduling the case for November 14, 1979 at 9:00 A.M. before Kathleen Beruard. This was sent out on a Final Notice letter requesting confirmation by signing and returning one copy of the letter. No copy was returned.

At the bottom of the letter I had typed:

"Please Note: This conference is scheduled in response to you request to have Default Order Lifted. Failure to appear will necessitate reissuance of Default Order. No postponements will be granted"

The taxpayer did not appear for the scheduled conference and only call the following day with an explanation that his car broke down. This was not accepted as the taxpayer could have come in any time that day if he had called that morning. Also take note that he made no mention of his attorney at all.

CASE # 2

Herbert Fischer (Tab # 23918) is a withholding penalty case for the periods 1/1/75 to 3/31/75 and 7/1/75 to 8/30/75 in the amount of \$2,472.13. For the period 10/1/75 to 12/31/75 in the amount of \$1,127.58 and for the period 1/1/76 to 12/31/76 in the amount of \$1,091.27. Total withholding penalty for this case is \$4,690.98.

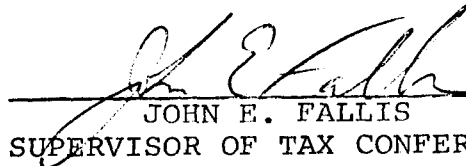
This case was conferenced for September 25, 1979 before Robert Healey. A postponement was granted based on a letter from the taxpayer dated September 6, 1979 stating that he needed 60 days to have his attorney assemble information for submission. This letter does not name the attorney.

A final notice was sent on October 19, 1979 scheduling this cases for November 21, 1979 at 10:30 A.M. The morning of the conference a Mr. Evans from Mr. Leland's firm called and said that Mr. Leland was in court and could not appear. Mr. Healey would not grant a postponement because he had no power of attorney. He informed Mr. Evans that the taxpayer should appear anyway. The reply to this was that they would not allow the client to appear without proper representation. Note that on the other case the taxpayer could not appear because his car broke down and no mention was made by him of a representative. Also note that the power of attorney which Mr. Leland said could not be obtained in his call to me on October 11, 1979 was in fact signed witnessed and notarized on October 11, 1979. I believe this was done in Mr. Leland's office as the initials of the witness and the office secretary are the same.

There are too many inconsistencies in both the taxpayer and his representatives statements to consider postponing the Final Notice on this case but if upon review you consider that due to the complexity of the situation we should schedule case # 23918 for another final notice I will begrudgingly condescend to doing so.

CASE # 3

Frederick Wirt (TAB # 23917) is a withholding penalty case for the same periods and amounts as Case # 2. Mr. Wirt submitted documentation to substantiate his position as an employee and not responsible for payment of taxes. This same documentation proves Mr. Fisher to be a responsible officer.



JOHN E. FALLIS
SUPERVISOR OF TAX CONFERENCE

JEF/jmg

September 13, 1979

Ruskin, Schlissel, Moscou & Evans, P.C.
114 Old Country Road
Mineola, New York 11501

Attention: Richard Guy Leland

Re: Herbert L. Fischer
20679

Dear Mr. Leland:

As per our conversation today, attached are requested Power of Attorney forms. Please have them completed and return to me.

If infact you are to represent Mr. Fischer along with the Power of Attorney, will you please indicate a day in early October which will be suitable to you for a conference. We will consider this date a "day certain" and confirm by a Final Notice appointment letter stating the time and place of the pre-hearing conference.

Very truly yours,

John E. Fallis Jr.
Supervisor of Tax Conference

JEFJ:ew
Encls.



New York State Department of
TAXATION and FINANCE
TAX APPEALS BUREAU

TO

DATE

10/11/79

No T.E.
TJP's Rep called said
he was getting P/O/A and
would soon be able to
set a date for a conference.
Told him that it must be
set by end of week.

gsp

Herbert Fischer
23 Bolan Drive
Huntington Sta., N.Y. 11746

September 6, 1979

Mr. Robert Healey, Conferee
State of New York
Tax Appeals Bureau
Two World Trade Center
New York, New York 10047

Dear Mr. Healey:

Pursuant to your letter of August 17, 1979 (copy attached), I hereby request a 60 day extension of this hearing during which my attorney will assemble certain information pertaining thereto.

This information which is highly relevant to the matter is not yet available, however, the requested extension should be adequate to cover any further delay.

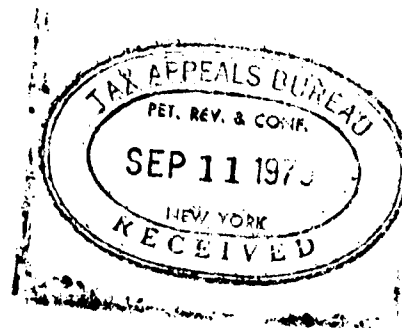
Thank you for your cooperation.

Very truly yours,

Herbert Fischer

HF:rmc

CERTIFIED MAIL #177197
RETURN RECEIPT REQUESTED



POWER OF ATTORNEY (INDIVIDUAL)

Taxpayer's Name and Address Herbert L. Fischer 23 Bolan Drive Huntington Station, New York	Appointed Representative's Name and Address Richard Guy Leland, Esq. Ruskin, Schlissel, Moscou & Evans, P.C. 114 Old Country Road Mineola, New York 11501
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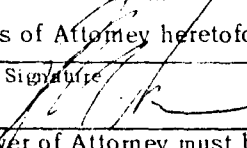
KNOW ALL MEN BY THESE PRESENTS that I, the taxpayer named above, appoint the person named above as my true and lawful attorney, to appear and represent me before the Department of Taxation and Finance in connection with a proceeding involving:

Type of Tax & Tax Year(s) or Period(s)

State Tax 1974-1975

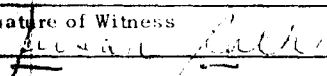
with full power to receive a copy of all communications in such proceedings; to receive refund checks, to execute waivers of restrictions on assessment of deficiencies and consents to extensions of the Statute of Limitations with full power of substitution and revocation.

All Powers of Attorney heretofore filed or granted for this purpose are hereby revoked.

Taxpayer's Signature 	Date 10/11/79	Spouse's Signature, if Joint Return Involved	Date
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*This Power of Attorney must be acknowledged before a notary public or witnessed by two disinterested individuals.

The person(s) signing as the above taxpayer(s) appeared before us and acknowledged this Power of Attorney as his/her/their voluntary act and deed.

Signature of Witness 	Date 10/11/79	Signature of Witness	Date
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ACKNOWLEDGEMENT

State of New York }
County of Nassau } s.s.:

On this 11th day of October, 1979, before me personally came Herbert L. Fischer to me known to be the person(s) described in the foregoing Power of Attorney, and he acknowledged that he executed the same.

Signature of Notary Public Diane Michel	Date 10/11/79
--	------------------

NOTARY PUBLIC, State of New York
DIANE MICHEL
No. 30-4691721
Qualified in Nassau County
Commission Expires March 30, 1981

NOTICE OF APPEARANCE

I agree to represent the above-named taxpayer in accordance with the above Power of Attorney and hereby give notice that I will appear in the above proceeding. All notices, decisions and other documents are to be sent to me at the address shown above. (If address different than above, send attachment with address)

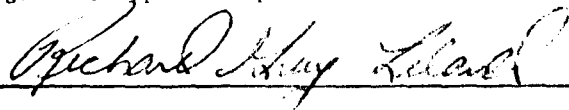
NOTE: IF A POWER OF ATTORNEY has been previously filed, a conformed copy thereof should be annexed hereto.

I am:

- | | |
|---|---|
| <input checked="" type="checkbox"/> an attorney-at-law licensed to practice in New York State | <input type="checkbox"/> an attorney-at-law or accountant duly authorized to practice in another State who prepared the taxpayer's return or claim for refund to which the petition relates |
| <input type="checkbox"/> a certified public accountant duly qualified to practice in New York State | <input type="checkbox"/> a person admitted to practice before the Internal Revenue Service or before the U.S. Tax Court |
| <input type="checkbox"/> a public accountant enrolled with the New York State Education Department | <input type="checkbox"/> the taxpayer's spouse, child, or parent |

*See Section 600.5 (c) of the Procedural Regulations on the back of this form

Signature of Appointed Representative



RUSKIN, SCHLISSEL, MOSCOU & EVANS, P.C.

COUNSELORS AT LAW
114 OLD COUNTRY ROAD
MINEOLA, N. Y. 11501

(516) 248-9500
(212) 895-5350

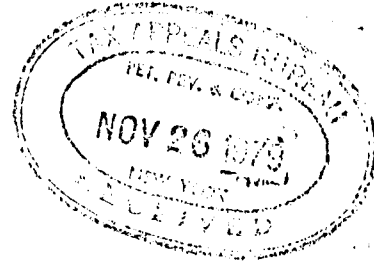
MELVYN B. RUSKIN
STEPHEN W. SCHLISSEL
JOSEPH J. MOSCOU
MICHAEL L. FALTISCHEK
RAYMOND S. EVANS

RONALD F. POEPPLEIN
RICHARD GUY LELAND
BENJAMIN WEINSTOCK
PERRY L. COHEN

NEW YORK CITY OFFICE
485 MADISON AVENUE
NEW YORK, N. Y. 10022
(212) 688-8300

November 21, 1979

Mr. Robert Healy
Conferee
State of New York
Tax Appeals Bureau
Two World Trade Center
New York, New York 10047



Re: Herbert Fischer
Personal Income Taxes - 1976
and 1976

Dear Mr. Healy:

This will confirm our telephone conversation of this morning in which I indicated that I was calling on behalf of our client, Herbert Fischer, who was scheduled to appear at a pre-hearing conference at your office this morning. Late yesterday afternoon, my associate, Richard Guy Leland, who was to appear on Mr. Fischer's behalf, telephoned me to say that he had been informed that it was necessary for him to appear in Court this morning. He requested that I call you to reschedule this morning's conference.

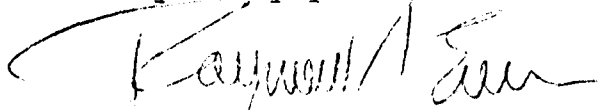
This morning I called you and you informed me that (a) you did not have a Power of Attorney for Mr. Leland, and (b) that even if you had a Power of Attorney, it would only be extraordinary circumstances that would allow you to reschedule a hearing, although you allowed that the engagement of an attorney at court would probably be considered "extraordinary circumstances."

When I later spoke with Mr. Leland by telephone, he informed me that, pursuant to a prior conversation with a Mr. Fallis, it was his intention to present to you the Power of Attorney at today's hearing.

Mr. Robert Healy
Page 2
November 21, 1979

We are herewith enclosing the Power of Attorney referred to above with the request that you telephone Mr. Leland to re-schedule the conference. As I indicated to you, your refusal to do so would deprive our client of his Constitutional rights and would entail our taking whatever steps are necessary to establish this.

Very truly yours,



RAYMOND S. EVANS.

RSE/sjr

Enc.