

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Daniel R. Ehrlich :  
AFFIDAVIT OF MAILING  
for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of :  
Personal Income Tax :  
under Article 22 of the Tax Law :  
for the Years 1970 - 1973. :

State of New York  
County of Albany

Jay Vredenburg, 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 23rd day of January, 1981, he served the within notice of Decision by certified mail upon Daniel R. Ehrlich, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Daniel R. Ehrlich  
c/o Harry Bettman, Executor  
59 John St.  
New York, NY 10038

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 petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this  
23rd day of January, 1981.

Corrie A. Haglund

J. Vredenburg

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of

Daniel R. Ehrlich :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of  
Personal Income Tax :  
under Article 22 of the Tax Law  
for the Years 1970 - 1973. :

State of New York  
County of Albany

Jay Vredenburg, 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 23rd day of January, 1981, he served the within notice of Decision by certified mail upon J. Roger Lane the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. J. Roger Lane  
59 John St.  
New York, NY 10038

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  
23rd day of January, 1981.

*Connie A. Hagelund*

*[Signature]*

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

January 23, 1981

Daniel R. Ehrlich  
c/o Harry Bettman, Executor  
59 John St.  
New York, NY 10038

Dear Mr. Bettman:

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:

NYS Dept. Taxation and Finance  
Deputy Commissioner and Counsel  
Albany, New York 12227  
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
J. Roger Lane  
59 John St.  
New York, NY 10038  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
DANIEL R. EHRLICH	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Years 1969, 1970 and	:	
1971.	:	

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Petitioner, Daniel R. Ehrlich (now deceased), c/o Harry Bettman, Executor, 59 John Street, New York, New York 10038, 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 1969, 1970 and 1971 (File No. 13492).

A formal hearing was held before Edward L. Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on July 21, 1978 at 11:10 A.M. and continued on February 9, 1979 at 9:00 A.M. Petitioner appeared by Hawkins, Delafield & Wood (Robert R. MacDonnell, Esq., of counsel) at the hearing held on July 21, 1978 and by Harry Bettman, Executor at the hearing held on February 9, 1979. The Audit Division appeared by Peter Crotty, Esq. (Frank Levitt, Esq., of counsel).

ISSUE

Whether petitioner is subject to a penalty pursuant to section 685(g) of the Tax Law as a person required to collect, truthfully account for and pay over withholding taxes due and owing from Roberts, Schaefer, Denitto & Co., Inc. for 1969, 1970 and 1971.

FINDINGS OF FACT

1. Under date of January 28, 1974 the Income Tax Bureau issued a Statement of Deficiency against petitioner, Daniel Ehrlich (now deceased), imposing a penalty equal to the amount of unpaid withholding taxes due from Roberts, Schaefer, Denitto & Co., Inc. for 1969, 1970 and 1971. Said statement was issued on the grounds that petitioner was a person required to collect, truthfully account for and pay over said taxes and that he willfully failed to do so. Accordingly, on January 28, 1974 a Notice of Deficiency was issued against petitioner for \$9,402.73.

2. Petitioner was vice-president of Roberts, Schaefer, Denitto & Co., Inc. for the period at issue. Any stock acquired by petitioner in the subject corporation was held by his daughter as nominee.

3. Petitioner was a financial backer and one-third owner of Roberts, Schaefer, Denitto & Co., Inc., an engineering firm specializing in structural design. Petitioner's principal business activity was in the field of insurance, for which he maintained an office at 59 John Street, New York, New York.

4. No evidence was adduced at the hearings held herein as to petitioners duties and responsibilities with Roberts, Schaefer, Denitto & Co., Inc., his salary and whether or not he had any knowledge of the corporation's past due withholding taxes. Petitioner's sole witness was his son-in-law who had "...limited knowledge as to some of the matters...".

5. The New York State withholding tax return for the first three months of 1971 and the reconciliation reports for 1969 and 1970 were signed by D. Denitto, President of the subject corporation.

CONCLUSIONS OF LAW

A. That petitioner, Daniel R. Ehrlich, has failed to sustain his burden of proof imposed by section 689(e) of the Tax Law to show that he was not a person required to collect, truthfully account for and pay over to New York

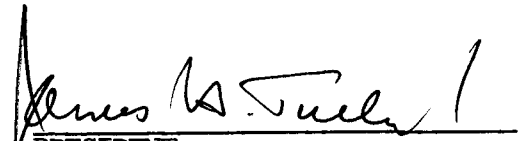
State withholding taxes due and owing from Roberts, Schaefer, Denitto & Co., Inc. for 1969, 1970 and 1971, in accordance with the meaning and intent of subsections (g) and (n) of section 685 of the Tax Law. His failure to collect, truthfully account for and pay over such taxes was willful and the penalty imposed was proper.

B. That the petition of Daniel R. Ehrlich is denied and the Notice of Deficiency issued on January 28, 1974 is sustained.

DATED: Albany, New York

JAN 23 1981

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER