

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 1969 - 1971. :

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.

Cornie A. Hagelund

[Signature]

STATE OF NEW YORK
STATE TAX COMMISSION

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Personal Income Tax :

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for the Years 1969 - 1971. :

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.

Cornie P. Hagelund

J. Vredenburg

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

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 1970 through 1973.	:	

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 1970 through 1973 (File No. 12734).

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 February 9, 1979 at 9:00 A.M. and continued on May 7, 1979 at 1:00 P.M., August 15, 1979 at 3:10 P.M. and February 1, 1980 at 1:15 P.M. Petitioner appeared by Harry Bettman, Executor at the hearing held on February 9, 1979 and by J. Roger Lane, Esq. at the hearings held on May 7, 1979, August 15, 1979 and February 1, 1980. 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 J.A. Maurer, Inc. for 1970 through 1973.

FINDINGS OF FACT

1. Under date of October 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 J.A. Maurer,

Inc. (hereinafter "Maurer") for 1970 through 1973. 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 October 28, 1974 a Notice of Deficiency was issued against petitioner for \$86,797.89.

2. Petitioner was President of Maurer from before 1970 until September 17, 1971, when he succeeded to the office of Chairman of the Board. Together with his two daughters petitioner controlled all the stock of Maurer. The Statement of Deficiency supra indicated that unpaid withholding taxes for all of 1970 and for 1971 up to September 17 amounted to \$42,749.77.

3. Prior to the period at issue Maurer borrowed \$750,000.00 from Royal Business Funds Corporation (hereinafter "Royal") in order to meet current obligations. Petitioner, as President of Maurer, personally guaranteed the loan by assignment of his personal assets, including all of the Maurer stock.

4. Maurer was unable to repay Royal the borrowed funds and Royal thereafter assumed defacto control of Maurer. At a special meeting of the Board of Directors of J.A. Maurer, Inc., held on September 17, 1971, petitioner was removed as President of Maurer and became Chairman of the Board. The by-laws of the corporation were also amended making the president the chief executive officer with responsibility to "...see that the books, reports, statements and certificates required by the statutes are properly kept, made and filed according to law".

5. It was also resolved at the September 17, 1971 meeting that "...all of the bank accounts of the corporation (except the payroll account for which the sole signatory shall be Irving Brand) have two, and only two signatories, and that one of said signatories is to be a designee of Royal Business Funds Corporation". The aforementioned Irving Brand was elected as President of Maurer at the September 17, 1971 meeting.

6. Petitioner, Daniel R. Ehrlich, remained employed with Maurer drawing a salary and having the use of a company car until October 3, 1972, the date he received a notice of termination of employment from Irving Brand, President of Maurer. After the September 17, 1971 Board of Directors meeting petitioner lost operational control of Maurer and remained with the company solely as a figurehead with little voice as to management.

CONCLUSIONS OF LAW

A. That prior to September 17, 1971 petitioner was President of Maurer, controlled all of the stock of the subject corporation and personally guaranteed corporate loans. That petitioner, Daniel R. Ehrlich, was a person required to collect, truthfully account for and pay over to New York State withholding taxes due and owing from Maurer for October 1, 1970 to September 17, 1971, within the meaning and intent of subsections (g) and (n) of section 685 of the Tax Law. That his failure to do so was willful.

B. That after September 17, 1971 petitioner was not a person required to collect, truthfully account for and pay over withholding taxes due and owing from Maurer.

C. That pursuant to Conclusions of Law "A" and "B", supra, petitioner is subject to a penalty imposed by section 685(g) of the Tax Law amounting to \$42,749.77.

D. That the petition of Daniel R. Ehrlich is granted to the extent indicated in Conclusion of Law "C" and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

JAN 23 1981

STATE TAX COMMISSION

PRESIDENT

COMMISSIONER

COMMISSIONER