

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Werner Eichholz :  
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 :  
1974 & 1975.

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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 30th day of October, 1981, he served the within notice of Decision by certified mail upon Werner Eichholz, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Werner Eichholz  
160 Claremont Ave.  
New York, NY 10027

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  
30th day of October, 1981.

*James A. Heglund*

*J. Vredenburg*

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Werner Eichholz :

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 :  
1974 & 1975.

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 30th day of October, 1981, he served the within notice of Decision by certified mail upon Rodney C. Starling the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Rodney C. Starling  
Starling & Naclerio  
5 Beekman 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  
30th day of October, 1981.

*Donnie A. Haglund*

*J. Vredenburg*

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

October 30, 1981

Werner Eichholz  
160 Claremont Ave.  
New York, NY 10027

Dear Mr. Eichholz:

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  
Rodney C. Starling  
Starling & Naclerio  
5 Beekman St.  
New York, NY 10038  
Taxing Bureau's Representative

## STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
WERNER EICHHOLZ : DECISION  
for Redetermination of a Deficiency or for :  
Refund of Personal Income Tax under Article 22 :  
of the Tax Law for the years 1974 and 1975. :

A small claims hearing was held before William Valcarcel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on February 27, 1981 at 2:45 P.M. Petitioner Werner Eichholz appeared with Rodney C. Starling, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (William Fox, Esq., of counsel).

II. Whether petitioner was a person required to collect, truthfully account for, and pay over personal income tax withheld from the employees of Maric Auto and Truck Repairs, Inc. and if so, whether such failure to do so was willfull.

FINDINGS OF FACT

1. Maric Auto and Truck Repairs, Inc. ("Maric") did not remit to the Department of Taxation and Finance \$2,659.80 in personal income taxes withheld from its employees as follows:

WITHHOLDING TAX PERIOD	AMOUNT
September 1 - September 30, 1974	\$1,765.50
January 1 - January 31, 1975	250.50
February 1 - February 28, 1975	201.70
March 1 - March 31, 1975	203.30
April 1 - April 30, 1975	238.80
TOTAL AMOUNT DUE	<u>\$2,659.80</u>

2. The Audit Division determined from records available at the County Clerk's Office in Queens County that petitioner Werner Eichholz was a corporate officer of Maric. On September 26, 1977 the Audit Division issued a Notice of Deficiency, on which a penalty under section 685(g) of the Tax Law was imposed against petitioner Werner Eichholz, as a person who willfully failed to collect, truthfully account for, and pay over personal income taxes withheld from the employees of Maric.

3. Petitioner Werner Eichholz contended that he was a professional flying instructor and that his association with Maric was strictly social. He further contended that he was not a stockholder, corporate officer, creditor, or employee of Maric and that he had no authority or voice in the conduct of Maric. However, petitioner was authorized to sign payroll checks and was listed at the bank as a corporate officer. Petitioner contended that he obtained the payroll at the bank strictly as a "favor" to Maric and for security reasons.

4. Petitioner Werner Eichholz was listed as a principal officer of Maric on the Certificate of Registration submitted to the Sales Tax Bureau. He was the sole individual listed, which also included his social security number, and

home address. Petitioner could not offer an explanation for the aforementioned listing.

CONCLUSIONS OF LAW

A. That the Audit Division, based on information in its possession that petitioner Werner Eichholz was a corporate officer of Maric Auto and Truck Repairs, Inc., properly issued a Notice of Deficiency within the purview of section 681(a) of the Tax Law.

B. That petitioner Werner Eichholz has failed to sustain the burden of proof required by section 689(e) of the Tax Law in submitting any credible evidence establishing that he was not a person required to collect, truthfully account for and pay over personal income taxes withheld from the employees of Maric, or that such failure to do so was not willfull.

C. That petitioner Werner Eichholz is a person, as defined in section 685(n) of the Tax Law, who willfully failed to collect, truthfully account for, and pay over personal income taxes withheld from the employees of Maric during the month of Sepbember 1974 and during the period January 1, 1975 through April 30, 1975, and as such, is subject to a penalty in accordance with the meaning and intent of section 685(g) of the Tax Law.

D. That the petition of Werner Eichholz is denied and the Notice of Deficiency issued September 26, 1977 for \$2,659.80 is sustained, together with such interest as may be lawfully owing.

DATED: Albany, New York

OCT 30 1981

STATE TAX COMMISSION

*James J. Tuller*  
PRESIDENT

*Francis R. Koenig*  
COMMISSIONER

*William J. Hill*  
COMMISSIONER