

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :

of

Robert A. Himoff :

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 Year 1975. :

State of New York

County of Albany

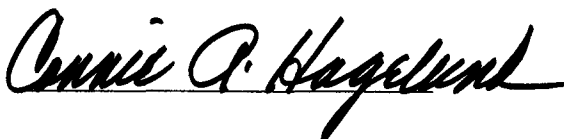
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 9th day of January, 1981, he served the within notice of Decision by certified mail upon Robert A. Himoff, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

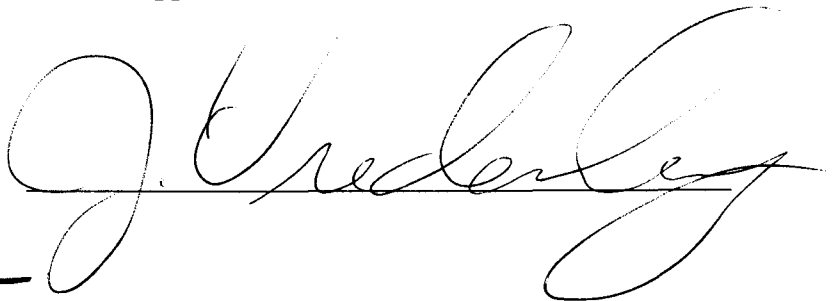
Robert A. Himoff  
c/o A. Fox  
2200 Central Rd.  
Fort Lee, NJ 07024

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  
9th day of January, 1981.





STATE OF NEW YORK  
STATE TAX COMMISSION

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of a Determination or a Refund of

Personal Income Tax :

under Article 22 of the Tax Law

for the Year 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 9th day of January, 1981, he served the within notice of Decision by certified mail upon Jay A. Newman 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. Jay A. Newman  
Ballou, Stroll & Itzler  
1180 Ave. of the Americas  
New York, NY 10036

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  
9th day of January, 1981.

*Connie P. Haglund*

*J. Vredenburg*

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

January 9, 1981

Robert A. Himoff  
c/o A. Fox  
2200 Central Rd.  
Fort Lee, NJ 07024

Dear Mr. Himoff:

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  
Jay A. Newman  
Ballon, Stroll & Itzler  
1180 Ave. of the Americas  
New York, NY 10036  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
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ROBERT A. HIMOFF	:	DECISION
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for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Year	:	
1975.	:	

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Petitioner, Robert A. Himoff, c/o A. Fox, 2200 Central Road, Fort Lee, New Jersey 07024, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1975 (File No. 18411).

A formal hearing was held before William J. Dean, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on July 24, 1979 at 1:15 P.M. Petitioner appeared by Ballon, Stoll & Itzler (Jay A. Newman, Esq., of counsel). The Audit Division appeared by Peter Crotty, Esq. (Samuel J. Freund, Esq., of counsel).

#### ISSUE

Whether petitioner is liable to a penalty equal to the unpaid withholding taxes of Himoff Maritime Enterprises, Ltd.

#### FINDINGS OF FACT

1. On December 20, 1976, the Audit Division issued a Notice of Deficiency and a Statement of Deficiency to petitioner for \$3,597.19 which constituted a penalty equal to the unpaid withholding taxes of Himoff Maritime Enterprises, Ltd. for the period October 16, 1975 through December 31, 1975.

2. Petitioner was President of Himoff Maritime Enterprises, Ltd. ("Himoff Maritime"). On or about September 26, 1975, Himoff Maritime entered into

proceedings for an arrangement under Chapter XI of the Bankruptcy Act.

3. By checks dated November 3, November 17, December 1, December 12 and December 29, 1975, Himoff Maritime paid to the New York State Income Tax Bureau a total of \$3,597.19, representing withholding taxes for the periods of October 16, 1975 through December 31, 1975. The checks bore the legend: "Himoff Maritime Enterprises, Ltd. [,] Debtor in Possession [,] Tax Account." The checks were mailed on the same date as drawn.

4. On or about January 16, 1976, the court appointed trustee in bankruptcy closed the tax account on which these checks were drawn. The balance in the account at the time of its closing was a sum more than sufficient to cover the checks mailed to the Audit Division.

#### CONCLUSIONS OF LAW

A. That Himoff Maritime was obligated to withhold employee income taxes (section 671 of the Tax Law) and that petitioner, by his own admission, was a corporate officer responsible for these deductions (section 685(n) of the Tax Law). Thus, petitioner would be liable for any willful failure to collect and pay over tax under section 685(g) of the Tax Law.

B. That Himoff Maritime, however, while a debtor in possession, did, in fact, pay over withholding taxes due New York for the period in dispute. The present dispute arises only because the checks were not cashed by the Audit Division until after the account on which they were drawn had been closed by the trustee for Himoff Maritime. There is no basis under section 685(g) of the Tax Law for finding liability against petitioner since there was no willful failure on the part of petitioner to collect and pay over the tax. Himoff Maritime, of course, continues to be liable for the taxes.

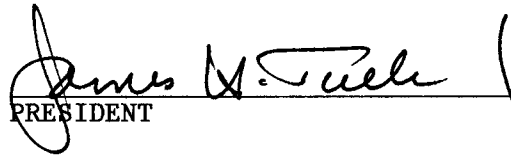
C. That the petition of Robert A. Himoff for the tax year 1975 is granted


and the Notice of Deficiency issued on December 20, 1976 is cancelled.

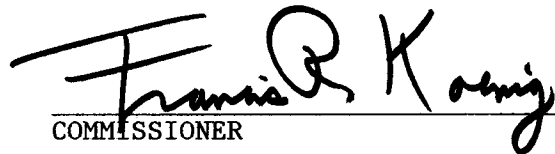
DATED: Albany, New York

STATE TAX COMMISSION

JAN 09 1981

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER

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

January 9, 1981

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Deputy Commissioner and Counsel  
Albany, New York 12227  
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Jay A. Newman  
Ballon, Stroll & Itzler  
1180 Ave. of the Americas  
New York, NY 10036  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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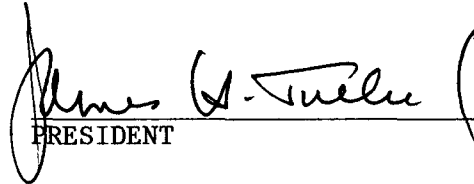


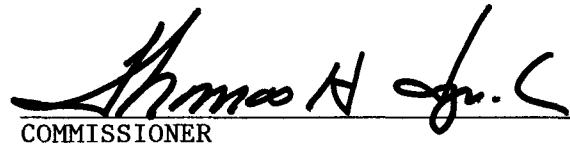
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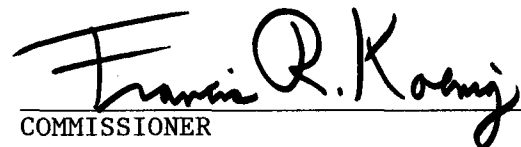
DATED: Albany, New York

STATE TAX COMMISSION

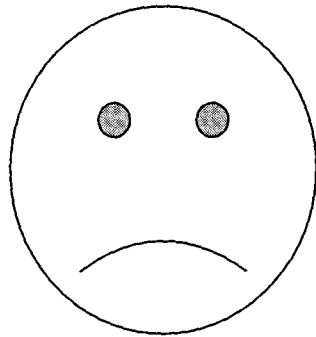
**JAN 09 1981**

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER

**CORRECTION  
FOLLOWS**



STATE OF NEW YORK

STATE TAX COMMISSION

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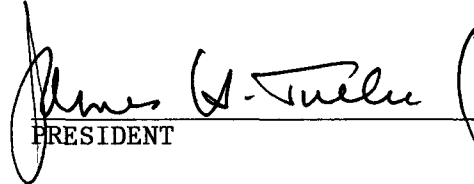
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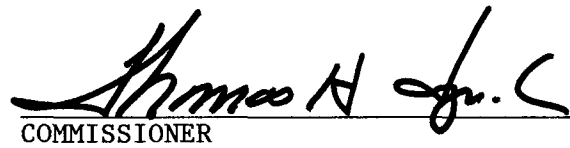
and the Notice of Deficiency issued on December 20, 1976 is cancelled.

DATED: Albany, New York

STATE TAX COMMISSION

**JAN 09 1981**

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER

ALBANY, N. Y. 12227

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REF ID: A66115107

7-15-1967

DECLASSIFIED

B/A  
sent  
2-3-81

c/o A. Fox

~~Control Pd~~

~~Fort/ bag NJ 0702~~

A circular ink stamp from the Tax Appeals Bureau. The text "TAX APPEALS BUREAU" is curved along the top inner edge. In the center, the date "JAN 30 1981" is stamped. The bottom of the stamp is partially obscured and illegible.

JAN 30 1981