

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
Erich Sachs

:

:

: 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 5th day of June, 1981, he served the within notice of Decision by certified mail upon Erich Sachs, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Erich Sachs
1188 Grand Concourse
Bronx, NY 10456

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
5th day of June, 1981.

Connie A. Haglund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

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of :
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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 5th day of June, 1981, he served the within notice of Decision by certified mail upon Allen B. Breslow 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. Allen B. Breslow
Marchi, Jaffe, Cohen, Crystal & Katz
2 Wall St.
New York, NY 10005

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
5th day of June, 1981.

Annice A. Hagelund

J. Vredenburg

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

June 5, 1981

Erich Sachs
1188 Grand Concourse
Bronx, NY 10456

Dear Mr. Sachs:

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
Allen B. Breslow
Marchi, Jaffe, Cohen, Crystal & Katz
2 Wall St.
New York, NY 10005
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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

Petitioner, Erich Sachs, 1188 Grand Concourse, Bronx, New York 10456, 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. 20731).

A small claims hearing was held before Allen Caplowaith, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 6, 1981 at 9:15 A.M. Petitioner appeared with Allen B. Breslow, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Samuel Freund, Esq., of counsel).

ISSUES

I. Whether petitioner is subject to a penalty pursuant to section 685(g) of the Tax Law as a person who willfully failed to collect, truthfully account for and pay over the New York State withholding taxes due from Finer Chrome Products Co., Inc.

II. Whether the deficiency survives New York State's failure to file a claim in either the corporate bankruptcy proceedings of Finer Chrome Products Co., Inc. or the personal bankruptcy proceedings of petitioner.

FINDINGS OF FACT

1. Finer Chrome Products Co., Inc. (hereinafter Finer Chrome), 499 East 163rd Street, Bronx, New York 10451, failed to pay over the New York State

personal income taxes withheld from wages of its employees for the periods as follows:

<u>Withholding Tax Period</u>	<u>Amount</u>
March 1, 1975 to March 31, 1975	\$ 290.79
April 1, 1975 to April 30, 1975	252.31
May 1, 1975 to May 23, 1975	229.69
TOTAL	<u>\$ 772.79</u>

2. On July 25, 1977, the Audit Division issued a Statement of Deficiency in conjunction with a Notice of Deficiency against petitioner, Erich Sachs, wherein a penalty was asserted pursuant to section 685(g) of the Tax Law, for an amount equal to the New York State withholding taxes due from Finer Chrome. Said penalty was asserted on the ground that petitioner was a person required to collect, truthfully account for and pay over the withholding taxes.

3. During the periods at issue, petitioner was Secretary/Treasurer of Finer Chrome, a manufacturer of furniture. He contended that his duties involved running the factory and controlling the purchasing function of the business. He averred that the payment of taxes was the responsibility of John Logan, Finer Chrome's President.

4. The petitioner herein and Mr. Logan were the sole officers of Finer Chrome. Each was a 50 percent shareholder and each had the authority to sign checks individually during the periods at issue.

5. Petitioner also argued that the deficiency should be cancelled since the State of New York failed to file a claim in either the bankruptcy proceedings of Finer Chrome or the bankruptcy proceedings of petitioner.

6. Petitioner contended that the withholding taxes due from Finer Chrome may have previously been paid, but he is unable to document such possible payment, since the books and records of Finer Chrome were recently destroyed.

CONCLUSIONS OF LAW

A. That petitioner, Erich Sachs, was a person required to collect, truthfully account for and pay over the personal income taxes withheld from the employees of Finer Chrome Products Co., Inc. within the meaning and intent of section 685(n) of the Tax Law. Accordingly, he is liable for the penalty imposed pursuant to section 685(g) of the Tax Law.

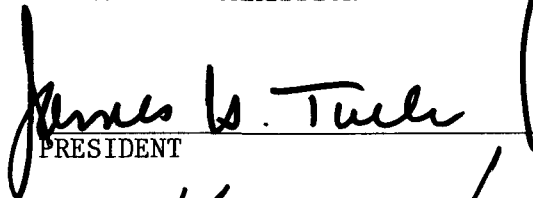
B. That the deficiency survives New York State's failure to file a claim in either the corporate bankruptcy proceedings of Finer Chrome Products Co., Inc. or the personal bankruptcy proceedings of petitioner since the Audit Division is *not required* to attempt to collect unpaid withholding taxes from a corporation, or from its trustee in bankruptcy, before imposing on and collecting from responsible officers the penalty imposed by section 685(g) of the Tax Law (Matter of Stanley Yellin, New York State Tax Commission, June 22, 1979). Moreover the petitioner's prior discharge in personal bankruptcy is not an effective legal bar to collection of the withholding tax penalty (Matter of Milton Weinstein, New York State Tax Commission, April 6, 1979).

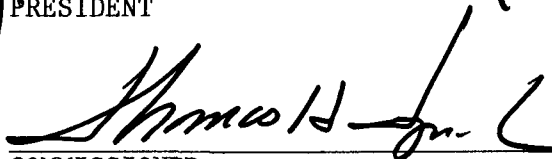
C. That the petition of Erich Sachs is denied and the Notice of Deficiency dated July 25, 1977 is sustained.


DATED: Albany, New York

JUN 5 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

TA 26 (9-79)

STATE OF NEW YORK
State Tax Commission
TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N. Y. 12227



UNCLAIMED

~~Erich Sachs
1188 Grand Concourse
Bronx, NY 10456~~

CLAIM CHECK
NO.

☐ HOLD

DATE

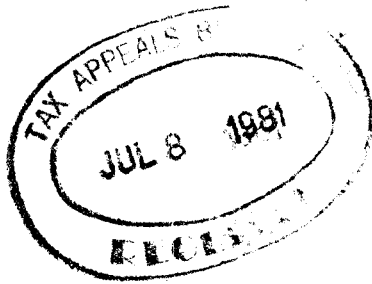
1ST NOTICE

JUN 13 1981

2ND NOTICE

RETURN

Detached from
PS Form 3849-A
May 1978



OPENED

P30 8915907

MAIL

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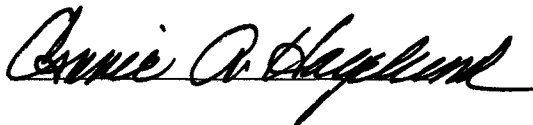
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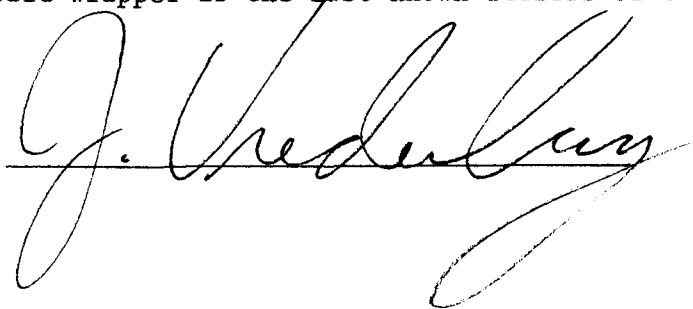
Erich Sachs
60 Knolls Crescent #7f
Bronx, NY 10463

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Sworn to before me this
6th day of November, 1981.





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Sworn to before me this
6th day of November, 1981.

Carmel A. Hagelad

J. Vredenburg