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## BUREAU OF LAW

## MEMORANDUM

*Income Tax Determination*  
*Felco Fabrics Corp.*  
*A-Z*

TO:

The State Tax Commission

FROM:

Solomon Sies, Hearing Officer

SUBJECT:

FELCO FABRICS CORP.  
1956 Assessment No. B-703442  
Formal Hearing*x - ref**Income Tax*  
*Determination. A-Z*  
*Bell, William H.*

The issue involved herein is the liability of the taxpayer corporation for failure to deduct and withhold tax due on the personal service compensation paid in 1956 to one William H. Bell, in accordance with sections 366 and 376, Article 16, of the Tax Law, then in effect during the year in issue.

The taxpayer defaulted in appearance at a scheduled formal hearing. During the year 1956 and prior thereto Felco Fabrics Inc. was and still is a domestic corporation organized under the laws of the State of New York maintaining its principal and sole place of business at 1407 Broadway, New York, New York. William H. Bell was employed by the taxpayer corporation in the State of New York during the year 1956. The aforesaid William H. Bell filed a non-resident return for 1956 indicating he was a resident of the State of Florida. He reported compensation received from taxpayer corporation in the amount of \$7,800, but failed to submit the tax due thereon. Felco Fabrics Corp. did not withhold the tax due on the compensation paid to Bell, claiming that the latter was a New York resident.

Former section 366, Article 16 of the Tax Law, as amended by Chapter 879, Laws of 1956, effective April 20, 1956 and applicable to payments and returns for any taxable year commencing on or after January 1, 1955, provided in part, that the withholding agent was required to "deduct and withhold a tax at the source with respect to all salaries, wages, commissions, gratuities, emoluments and other fixed or determinable, annual or periodical compensation of whatever kind and in whatever form paid, credited, or received by any taxpayer for personal services rendered unless a certificate is filed with the withholding agent to the effect that the person entitled to such compensation is a resident of this State and setting forth his residence address, after the beginning of the calendar year and before the time when he is required to make return and payment." Withholding agents were required to make available for inspection

such residence certificates. Section 376, Article 16 of the Tax Law, in effect in 1956, imposed liability upon the withholding agent for payment of the tax plus penalty and interest.

Article 266 of the Personal Income Tax Regulations under Article 16 of the Tax Law, in effect during 1956, provided that Form 101 (form of residence certificate) shall be used by residents of New York State for the purpose of claiming the benefit of such residence for income tax purposes; that withholding agents shall retain, preserve and keep available for examination and inspection by the Tax Commission or its authorized representative all residence certificates for a period of three years following the close of the calendar year for which such certificates shall have been given.

On February 16, 1959, the Income Tax Bureau requested taxpayer (as the withholding agent) to produce a copy of Form IT-101 (residence certificate) for the year 1956 signed by William H. Bell, but said taxpayer failed to do so. Information in the file indicates that the taxpayer failed and neglected to have its employee, William H. Bell, file a certificate of residence and exemption certificate for the year 1956 as required by section 366, then in effect. If such certificate had been filed, no deducting or withholding would have been required on the part of the employer. The fact that the taxpayer employer believed that its employee Bell was a resident, does not excuse it from complying with the statute and regulations as they then existed during the year in issue.

I am therefore of the opinion that the assessment against the taxpayer employer (withholding agent) should be sustained.

For the reasons stated above, I recommend that the determination of the Tax Commission in the above matter be substantially in the form submitted herewith.

18/ Solomon Sieb  
Hearing Officer

SS:lb

Enc.

August 6, 1969

**STATE OF NEW YORK**  
**STATE TAX COMMISSION**

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**IN THE MATTER OF THE APPLICATION**

**OF**

**FELCO FABRICS CORP.**

**FOR REVISION OR REFUND OF PERSONAL  
INCOME TAXES UNDER ARTICLE 16 OF THE  
TAX LAW FOR THE YEAR 1956**

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**Felco Fabrics Corp., the taxpayer herein, having filed an application for revision or refund of personal income taxes under Article 16 of the Tax Law and a hearing having been scheduled herein at the office of the State Tax Commission at 80 Centre Street, New York City, N.Y. for the 13th day of July, 1964, pursuant to a notice of hearing duly mailed to said taxpayer on June 12, 1964, to be held before Solomon Sies, Hearing Officer of the Department of Taxation and Finance and the taxpayer having defaulted in appearance at the aforementioned scheduled hearing; that a subsequent letter having been mailed to the taxpayer and its representative affording them an opportunity to request a rescheduled hearing; that the taxpayer and its representative having failed to respond to such letter; that the record, as presently constituted, having been duly examined and considered,**

**The State Tax Commission hereby finds:**

(1) That during the year 1956 and prior thereto Felco Fabrics Corp. was and still is a domestic corporation organized under the laws of the State of New York, maintaining its principal and sole place of business at 1407 Broadway, New York, New York; that during the year 1956, William H. Bell was employed by Felco Fabrics Corp. in the State of New York; that the personal compensation paid to said William H. Bell by Felco Fabrics Corp. during 1956 amounted to \$7,800.00.

(2) That William H. Bell filed a nonresident New York State income tax return for 1956 in which he indicated that he was a resident of the State of Florida; that he reported on said return income in the amount of \$7,800.00 received from Felco Fabrics Corp.; that he indicated on said return that no tax was withheld at the source; that said William H. Bell failed to pay the tax due thereon.

(3) That on February 16, 1959, the Department of Taxation and Finance requested the taxpayer to produce a copy of Form 101 (form of residence certificate) required to be executed and filed with it by William H. Bell for the year 1956 to the effect that the latter claimed to be a New York resident and stating his residence address thereon during said year; that the taxpayer failed to submit or produce such copy of residence certificate; that the taxpayer failed and neglected to have its employee, William H. Bell, execute and file with it a certificate of residence as required pursuant to the provisions of former section 366, Article 16, of the Tax Law, in effect for the year 1956; that the employer, Felco Fabrics Corp., was required to retain said certificate for a period of three (3) years, following the close of the calendar year for which such certificates shall have been given.

(4) That the taxpayer, Felco Fabrics Corp., failed

to withhold the tax due on the personal service compensation paid to William H. Bell during the year 1956; that on December 10, 1959, the Department of Taxation and Finance made an additional assessment against the taxpayer herein, Felco Fabrics Corp., (Assessment No. B-703442) for failure to withhold the tax due on the personal service compensation paid to the aforementioned William H. Bell for the year 1956 inasmuch as William H. Bell failed to submit the tax due thereon; that said assessment was made pursuant to the provisions of sections 366 and 367, Article 16 of the Tax Law, then in effect for said year and accordingly imposed tax, penalty and interest due in the amount of \$160.14.

Based upon the foregoing findings and all of the evidence presented herein, the State Tax Commission hereby DETERMINES:

(A) That during the year 1956, the taxpayer employer as withholding agent was required in accordance with the provisions of former section 366, Article 16 of the Tax Law, then in effect during the year in issue, to deduct and withhold at the source with respect to the salaries, wages, commissions, gratuities, emoluments and other fixed or determinable compensation of whatever kind and in whatever form paid credited or received by its employee William H. Bell for personal services rendered in the absence of a certificate of residence (Form 101) executed and filed by said William H. Bell with the taxpayer to the effect that said person was resident of this State and setting forth his residence address.

(B) That since William H. Bell failed to pay the tax due on the compensation received from the taxpayer and the latter failed to deduct and withhold said tax, the taxpayer as withholding agent, became liable for the tax, penalty and interest due on said compensation paid to the aforementioned William H. Bell in 1956, in accordance with the provisions of

section 376, Article 16 of the Tax Law, then in effect.

(C) That, accordingly, said assessment for the year 1956 (Assessment No. B-703442) is correct; that it does not include any tax or other charge which could not have been lawfully demanded and that the taxpayer's application for revision or refund filed with respect thereto be and the same is hereby denied.

DATED: Albany, New York on the 6th day of October, 1969.

**STATE TAX COMMISSION**

/s/

**NORMAN GALLMAN**  
**Commissioner**

/s/

**A. BRUCE MANLEY**  
**Commissioner**

/s/

**MILTON KOERNER**  
**Commissioner**