

STATE OF NEW YORK  
STATE TAX COMMISSION

\_\_\_\_\_  
In the Matter of the Petition

of

MILTON HURST

For a Redetermination of a Deficiency or  
a Refund of Personal Income :  
Taxes under Article(s) 22 of the  
Tax Law for the (Year(s) 1964 & 1965 :

AFFIDAVIT OF MAILING  
OF NOTICE OF DECISION  
BY (CERTIFIED) MAIL

State of New York  
County of Albany

Martha Funaro , being duly sworn, deposes and says that  
she is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 5th day of April , 19 72, she served the within  
Notice of Decision (or Determination) by (certified) mail upon Milton Hurst  
(representative of) the petitioner in the within

proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Milton Hurst

229-48 129th Avenue  
Laurelton, New York

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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative  
of) 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 April , 1972.

Rae Zimmerman

Martha Funaro



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

NORMAN F. GALLMAN, PRESIDENT  
A. BRUCE MANLEY  
MILTON KOERNER

BUILDING 9, ROOM 214A

STATE CAMPUS  
ALBANY, N. Y. 12227

AREA CODE 518  
457-2655, 6, 7

STATE TAX COMMISSION  
HEARING UNIT

EDWARD ROOK  
SECRETARY TO  
COMMISSION

ADDRESS YOUR REPLY TO

**Dated:** Albany, New York

**April 5, 1972**

**Milton Hurst  
229-48 129th Avenue  
Laurelton, New York**

**Dear Mr. Hurst:**

Please take notice of the **DECISION** of  
the State Tax Commission enclosed herewith.

Please take further notice that pursuant to section(s)  
**690** of the Tax Law any proceeding  
in court to review an adverse decision must be commenced  
within **4 Months** after the date of this notice.

Any inquiries concerning the computation of tax due or  
refund allowed in accordance with this decision or  
concerning any other matter relating hereto may be  
addressed to the undersigned. These will be referred  
to the proper party for reply.

Very truly yours,

*L. Robert Leisner*  
**L. Robert Leisner**

Hearing Officer

cc Petitioner's Representative  
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
MILTON HURST	:	DECISION
for a Redetermination of a Deficiency	:	
or for Refund of a penalty under section 685(g),	:	
Article 22 of the Tax Law for the years 1964	:	
and 1965.	:	
	:	

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Milton Hurst petitioned for a redetermination of a penalty under section 685(g), Article 22 of the Tax Law for the years 1964 and 1965. The taxpayer submitted the case on evidence previously presented.

ISSUES

Was the taxpayer liable for \$6,080.20 penalties for willful failure to collect and pay over New York State withholding taxes for the year 1964 and 1965?

FINDINGS OF FACT

1. Hurst Typographers, Inc., failed to pay over withheld state income taxes in the amount of \$3,032.45 in 1964 and \$3,047.75 covering the year 1965. All assets of the corporation were sold but there still remained in excess of \$100,000.00 of debts. A personal assessment of a penalty for the unpaid withheld state taxes was proposed by a statement of deficiency dated May 25, 1968, and issued against Milton Hurst.

2. Milton Hurst was secretary and treasurer of Hurst Typographers, Inc., during 1964 and until July 31, 1965. During the aforesaid time, he and Jack Hurst signed checks and Milton Hurst

also signed form IT 2103. Milton Hurst received a salary in excess of \$12,000.00 in 1964 and in 1965 he received a salary of \$7,000.00 until the end of July.

3. Milton Hurst left the business at the end of July, 1965, and did not take part in the affairs of the corporation thereafter. He sold his 50% interest in the business to Jack Hurst with an agreement dated November 15, 1965. Milton Hurst knew of the prior withholding tax liability. He signed forms IT 2103. By agreement between Milton Hurst and Jack Hurst, Jack Hurst agreed to pay the delinquent Federal and State withholding taxes. Jack Hurst later sold the business.

4. Milton Hurst contended that the agreement of Jack Hurst cleared him of liability for withholding taxes.

#### CONCLUSIONS OF LAW

A. Milton Hurst was a responsible person under section 685(g) of the Tax Law, and required to collect and pay over the tax imposed by the Tax Law and he willfully failed to collect such tax or pay over such tax for 1964 and for the period January 1, 1965, to July 31, 1965. During such time, he consciously and knowingly acted so that the corporation paid himself and others rather than the State. Milton Hurst was not a responsible person for collecting and paying over the tax after July 31, 1965.

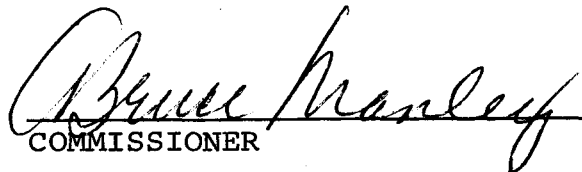
B. The penalty asserted by the proposed assessment and statement of deficiency for the year 1964 is sustained in the amount of

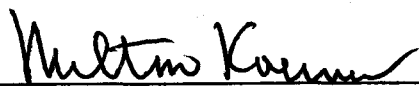
\$3,032.45 and for the year 1965 the penalty is modified to \$2,031.00 to cover January 1, 1965, to July 31, 1965, and sustained as modified.

DATED: Albany, New York  
*April 5, 1972*

STATE TAX COMMISSION

  
COMMISSIONER

  
COMMISSIONER

  
COMMISSIONER