

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

WILLIAM M. HITCHCOCK

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

For a Redetermination of a Deficiency or  
a Refund of Personal Income Tax  
Taxes under Article(s) 22 of the  
Tax Law for the Year(s) 1967, 1968,  
1969, 1970 and 1971.

State of New York  
County of Albany

MARYLOU SAMUELS, 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 20th day of May, 1976, she served the within  
Notice of Decision ~~(or Determination)~~ by (certified) mail upon William M.

Hitchcock ~~(representative of)~~ the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Mr. William H. Hitchcock  
5531 East Fort Lowell  
Tucson, Arizona 85701

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

20th day of May, 1976

Janet Mack

Marylou Samuels

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

WILLIAM M. HITCHCOCK

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

For a Redetermination of a Deficiency or  
a Refund of Personal Income Taxes  
Taxes under Article(s) 22 of the  
Tax Law for the Year(s) 1967, 1968,  
1969, 1970 and 1971.

State of New York  
County of Albany

MARYLOU SAMUELS, 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 20th day of May, 1976, she served the within Notice of Decision ~~(on Determination)~~ by (certified) mail upon John H. Doyle, III, Esq. (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: John H. Doyle, III, Esq. Kirkpatrick, Lockhart, Johnson & Hutchinson, Counsel Anderson, Russell & Kill, Of Counsel 600 Fifth Avenue New York, New York 10020 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

20th day of May, 1976

Janet Mac

Marylou Samuels



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

TAX APPEALS BUREAU

STATE CAMPUS  
ALBANY, N.Y. 12227

STATE TAX COMMISSION

ADDRESS YOUR REPLY TO

May 20, 1976

TELEPHONE: (518) **457-3850**

Mr. William H. Hitchcock  
5531 East Fort Lowell  
Tucson, Arizona

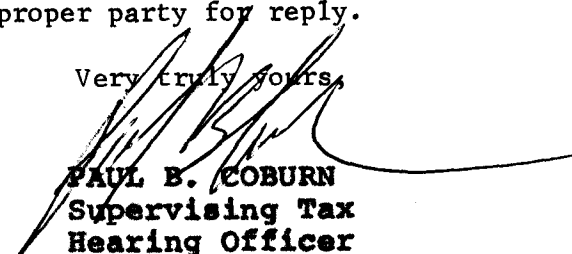
Dear Mr. Hitchcock:

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

Please take further notice that pursuant to  
Section ~~690~~ **690** of the Tax Law, any  
proceeding in court to review an adverse deci-  
sion must be commenced within **4 months**  
from the date of this notice.

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

Very truly yours,

  
**PAUL B. COBURN**  
Supervising Tax  
Hearing Officer

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

---

In the Matter of the Petition

of

WILLIAM M. HITCHCOCK

DECISION

for Redetermination of a Deficiency or  
for Refund of Personal Income Tax under  
Article 22 of the Tax Law for the Years  
1967, 1968, 1969, 1970 and 1971.

---

Petitioner, William M. Hitchcock, has filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1967, 1968, 1969, 1970 and 1971. (File No. 13-1986881). A formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on April 16, 1974, at 9:15 a.m. Petitioner appeared by Kirkpatrick, Lockhart, Johnson & Hutchinson, Esqs. (Anderson, Russell & Kill, Esq. of counsel, by John H. Doyle, III, Esq.). The Income Tax Bureau appeared by Saul Heckelman, Esq. (Solomon Sies, Esq., of counsel).

#### ISSUE

Is petitioner, William M. Hitchcock, liable for unpaid New York State withholding taxes due from El Tiempo, Inc. for the years 1967, 1968, 1969, 1970 and 1971?

FINDINGS OF FACT

1. El Tiempo, Inc. failed to pay over to the Income Tax Bureau \$36,351.98 of New York State personal income taxes withheld from its employees for the years 1967, 1968, 1969, 1970 and 1971.

2. Petitioner, William M. Hitchcock, was a full-time employee of Lehman Brothers, a Wall Street banking firm, when he made his original investment in 1963, the year in which El Tiempo was founded. Petitioner was made president of El Tiempo, Inc. in 1963, as well as a director, but continued his full-time employment with Lehman Brothers. In 1967, he changed firms and was employed by Delafield and Delafield, a brokerage firm in New York City. In August, 1967, petitioner moved to California and in March, 1969, he returned to New York City.

3. In August, 1968, petitioner resigned as president and a director of El Tiempo, Inc. In May, 1969, petitioner was made vice-president of El Tiempo, Inc. and re-elected as a director thereof but resigned both positions effective June 30, 1970.

4. El Tiempo, Inc. filed New York State "Reconciliation of Personal Income Tax Withheld for Employers Filing Monthly and Semi-Annual Returns" (Form IT-2103 (BNS)) for the years 1967, 1968, 1969, 1970 and 1971. Each of the returns filed had the

word "arrangement" stamped thereon, as well as the filed "Employer's Monthly Returns of New York State Personal Income Tax Withheld" (Form IT-2101M) which showed no remittance.

5. Under date of May 24, 1971, the Income Tax Bureau issued a Statement of Deficiency and a Notice of Deficiency against petitioner, William M. Hitchcock, imposing a penalty in the amount of \$36,351.98 which is equal to the amount of unpaid withholding taxes due from El Tiempo, Inc., for the years 1967 through 1971. El Tiempo, Inc. was adjudicated a bankrupt in July, 1972, after having filed a petition for reorganization under Chapter XI of the Bankruptcy Law in April, 1971.

6. At all of the times in question the petitioner, William M. Hitchcock, was only the titular head of El Tiempo, Inc. He attended not many board meetings after his return from California. During his tenure of office he was not involved in the operation or management of the newspaper El Tiempo, and had nothing to do with the payment of creditors or taxes. Petitioner, William M. Hitchcock, had no authority over the daily administration of the business affairs of the newspaper, El Tiempo, published by El Tiempo, Inc., he drew no salary, and had no office at the offices of El Tiempo.

7. Petitioner, William M. Hitchcock, although having authority to sign checks prior to the end of 1968, signed but few

during the five years he had such authority and was not a signatory on any El Tiempo checking accounts thereafter. He never advised that any creditors should be given preference over taxing authorities.

8. An attempt to raise funds by a "Public Offering", the payment of the withholding taxes having first priority from the receipts, was unsuccessful.

CONCLUSIONS OF LAW

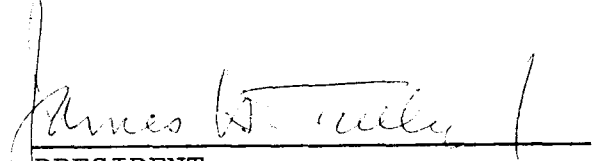
A. That petitioner, William M. Hitchcock, although an officer and director of El Tiempo, Inc., was not a person under a duty to perform the task of collecting and paying the withholding taxes. The failure to pay over the withholding taxes was not a willful attempt in any manner to evade or defeat the tax or payment thereof.


B. That since petitioner, William M. Hitchcock, did not willfully fail or cause El Tiempo, Inc., to willfully fail to collect, truthfully account for and pay over New York State withholding taxes due from said corporation for the years 1967, 1968, 1969, 1970 and 1971, therefore a penalty equal to the total amount of the unpaid withholding taxes was improperly assessed against him in accordance with the meaning and intent of section 685(g) of the Tax Law.

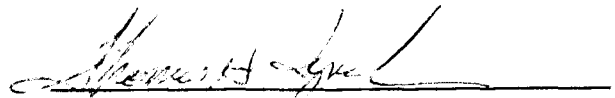
C. That the petition of William M. Hitchcock is granted  
and the Notice of Deficiency issued May 24, 1971, is cancelled.

DATED: Albany, New York  
May 20, 1976

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER