

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

CLINTON B. HUTTO

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Personal Income :  
Taxes under Article (22) of the :  
Tax Law for the Year(s) ~~or Period(s)~~ :  
1972 and 1973.

State of New York  
County of Albany

John Huhn, 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 17th day of April, 1978, ~~he~~ served the within  
Notice of Decision by (certified) mail upon Clinton B. Hutto

(~~representative of~~) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Mr. Clinton B. Hutto  
1590 Scribner Road  
Penfield, New York 14526

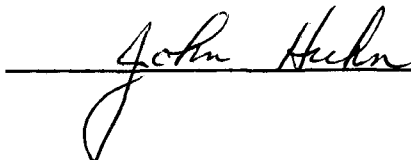
and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Postal Service within the State of New York.

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

17th day of April, 1978.





STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

CLINTON B. HUTTO

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Personal Income :  
Taxes under Article (x) 22 of the :  
Tax Law for the Year(s) ~~xxx Period(s)~~ :  
1972 and 1973.

State of New York  
County of Albany

John Huhn , being duly sworn, deposes and says that  
~~x~~he is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 17th day of April , 1978, ~~x~~he served the within  
Notice of Decision by (certified) mail upon Wallace F. Ashnault

(representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed

as follows: Wallace F. Ashnault, Esq.  
Wickins, Ashnault & Schaefer  
100 Times Square Building  
45 Exchange Street

and by depositing same enclosed in a postpaid properly addressed wrapper in a  
Rochester, New York 14614  
(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

17th day of April , 1978.







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

**April 17, 1978**

JAMES H. TULLY JR., PRESIDENT  
MILTON KOERNER  
THOMAS H. LYNCH

**Mr. Clinton B. Hutto**  
**1590 Scribner Road**  
**Penfield, New York 14526**

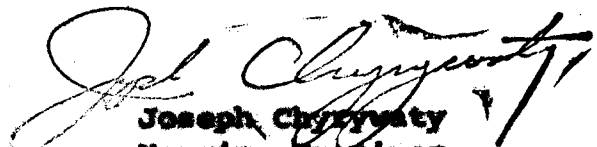
**Dear Mr. Hutto:**

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 the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,

  
**Joseph Chirzyewski**  
**Hearing Examiner**

cc: Petitioner's Representative  
Taxing Bureau's Representative

## STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
CLINTON B. HUTTO : DECISION  
for Redetermination of a Deficiency or :  
for Refund of Personal Income Tax :  
under Article 22 of the Tax Law for :  
the Years 1972 and 1973. :  
:

A small claims hearing was held before Harry Huebsch, Hearing Officer, at the offices of the State Tax Commission, One Marine Midland Plaza, Rochester, New York, on August 8, 1977 at 2:45 P.M. Petitioner appeared by Wallace F. Ashnault, Esq. The Income Tax Bureau appeared by Peter Crotty Esq. (Louis Senft, Esq., of counsel).

II. Whether New York State's failure to file a timely claim for withholding tax due from Marine Resources, Inc. in a Florida bankruptcy court relieved petitioner of personal liability with respect to said withholding taxes.

FINDINGS OF FACT

1. Marine Resources, Inc. failed to pay over to the Income Tax Bureau \$1,836.07 in New York State personal income taxes withheld from its employees during the years 1972 and 1973.

2. On August 25, 1975, the Income Tax Bureau issued a Statement of Deficiency against petitioner, Clinton B. Hutto, for a penalty equal to the amount of New York State withholding taxes due from Marine Resources, Inc. for the years 1972 and 1973. It did so on the grounds that he was a person required to collect, truthfully account for and pay over said taxes and that he willfully failed to do so.

3. Petitioner contended that he was never a paid operating officer of Marine Resources, Inc., nor was he ever involved in the day-to-day operations of the corporation.

4. Petitioner helped to organize and finance Marine Resources, Inc. He and his family owned a substantial amount of said corporation's stock. During the years 1972 and 1973, petitioner was a director and chairman of the Board of Directors. The Board of Directors appointed the operating officers of the corporation each year. Petitioner had knowledge of the financial difficulties of said corporation. He advanced funds to the corporation to help it meet its payroll and also personally guaranteed the corporation's performance of a Federal contract. The financial statements which showed withholding taxes accrued and due were available to him. The financial standing of the corporation was discussed at board meetings. During the years 1972 and 1973, petitioner was also engaged in other businesses and ventures.

5. Marine Resources, Inc. moved its headquarters to Florida and, through bankruptcy court action, went into reorganization, New York State filed a claim

for withholding taxes due which was deemed untimely by the court. Petitioner contended that New York State could have received the withholding taxes due had it filed a timely claim.

CONCLUSIONS OF LAW

A. That petitioner, Clinton B. Hutto, was a person required to collect, truthfully account for and pay over New York State withholding taxes due from Marine Resources, Inc. for the years 1972 and 1973, in accordance with the meaning and intent of section 685(n) of the Tax Law. Since petitioner willfully failed or caused Marine Resources, Inc. to willfully fail to collect, truthfully account for and pay over New York State withholding taxes due from said corporation for the years 1972 and 1973, a penalty equal to the total amount of unpaid withholding taxes was properly asserted against him in accordance with the meaning and intent of section 685(g) of the Tax Law.

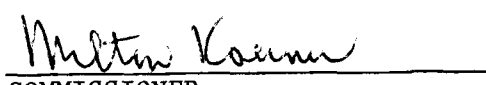
B. That any action by the bankruptcy court involving Marine Resources, Inc. does not relieve petitioner of his personal liability under section 685(g) of the Tax Law.

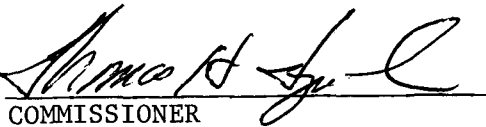
C. That the petition of Clinton B. Hutto is denied and the Statement of Deficiency issued August 25, 1975 is sustained.

DATED: Albany, New York  
April 17, 1978

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER