

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

WILLIAM F. JOHNSTON, SR.

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article(s) 22 of the :
Tax Law for the Year(s) ~~or Period(s)~~ :
1971, 1972 & 1973

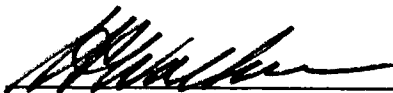
State of New York
County of Albany


John Huhn, 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 13 day of October, 1978, she served the within
Notice of Decision by (certified) mail upon William F.
Johnston, Sr. ~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: William F. Johnston, Sr.
172 Ludlam Avenue
Elmont, NY 11003
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)~~
~~XXXXX~~ 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

13 day of October, 1978







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

October 13, 1978

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

William F. Johnston, Sr.
172 Ludlam Avenue
Elmont, NY 11003

Dear Mr. Johnston:

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 **(x) 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 Chyrywat
Hearing Examiner

cc: ~~Petitioner's Representative~~

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	;	
of	:	
WILLIAM F. JOHNSTON, SR.	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Years	:	
1971, 1972 and 1973.	:	

Petitioner, William F. Johnston, Sr., 172 Ludlam Avenue, Elmont, New York 11003, 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 1971, 1972 and 1973 (File No. 12646).

On December 19, 1977, petitioner advised the State Tax Commission, in writing, that he desired to waive a small claims hearing and to submit the case to the State Tax Commission upon the entire record contained in the file.

ISSUE

Whether petitioner was liable for the penalty imposed against him in accordance with section 685(g) of the Tax Law, with respect to unpaid New York State withholding taxes due from Compact Communications Corporation for 1971, 1972 and 1973.

FINDINGS OF FACT

1. Compact Communications Corporation failed to pay over to the New York State Income Tax Bureau \$2,125.70 in personal income tax withheld from its employees' wages during 1971, 1972 and 1973.

2. Petitioner, William Johnston, Sr., contended that he was employed by Compact Communications Corporation in the capacity of chauffeur and that he had no access to the books and records of said corporation.

3. Petitioner had authority to sign checks in payment of creditors. He was listed as vice-president of Compact Communications Corporation for New York State corporation tax purposes. He was listed as president of said corporation on the bank signature card of the Chase Manhattan Bank. On a National City Bank resolution form, he was listed as secretary. Petitioner indicated that his title was secretary and also treasurer of the corporation. Petitioner had knowledge of the accounting procedures used by the corporation.

4. Petitioner did not submit documentary or any substantial evidence to show that his only involvement with Compact Communications Corporation during 1971, 1972 and 1973 was in the capacity of chauffeur and that he was not a person under a duty to collect, truthfully account for and pay over to the Income Tax Bureau, New York State personal income taxes withheld from the employees of said corporation.

CONCLUSIONS OF LAW

A. That petitioner, William F. Johnston, Sr., was a person required to collect, truthfully account for and pay over New York State withholding taxes due from Compact Communications Corporation for 1971, 1972 and 1973 in accordance with the meaning and intent of section 685(n) of the Tax Law; that petitioner willfully failed or caused Compact Communications Corporation to willfully fail to collect, truthfully account for and pay over New York State withholding taxes due from said corporation for 1971, 1972 and 1973. Therefore, 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.

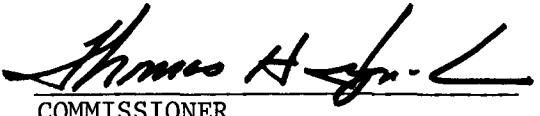
B. That the petition of William F. Johnston, Sr. is denied and the Notice of Deficiency issued May 19, 1975 in the amount of \$2,125.70 is sustained.

DATED: Albany, New York
October 13, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER