

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
FELIX STORCH

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) ~~XXXXXX~~ ~~(s)~~ :
1967, 1968 and 1969.

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 16th day of March, 1978, she served the within
Notice of Decision by (certified) mail upon Felix Storch

~~XXXXXX~~ representative of the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Felix Storch
58 Davenport Road
Yonkers, 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 Postal Service within the State of New York.

That deponent further says that the said addressee is the ~~XXXXXXXXXXXX~~
~~XXXXXX~~ petitioner herein and that the address set forth on said wrapper is the
last known address of the ~~XXXXXXXXXXXXXXXXXXXX~~ petitioner.

Sworn to before me this

16th day of March, 1978.

Janet Mack

John Huhn



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

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

March 16, 1978

Felix Storch
58 Davenport Road
Yonkers, New York

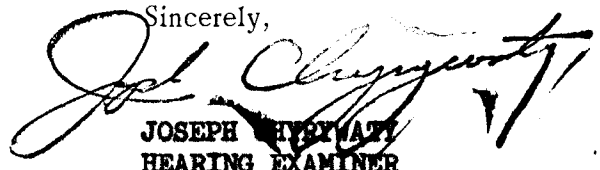
Dear Mr. Storch:

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 Month** 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 HYATT
HEARING EXAMINER

~~XXXXXX Bureau's Representative XXXXXX~~

Taxing Bureau's Representative

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
FELIX STORCH	:	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 and 1969.	:	

Petitioner, Felix Storch, 58 Davenport Road, Yonkers, New York 10710, 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 and 1969 (File No. 14327).

A small claims hearing was held before William Valcarcel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on July 7, 1977 at 1:15 P.M. Petitioner appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq. (Irwin Levy, Esq., of counsel).

ISSUE

Whether petitioner is subject to a penalty under section 685(g) of the Tax Law.

FINDINGS OF FACT

1. On June 29, 1970, the Income Tax Bureau issued a Notice of Deficiency asserting a penalty under section 685(g) of the Tax Law against petitioner, Felix Storch, as a person who willfully failed

to collect, truthfully account for and pay over personal income taxes withheld by Monitor Equipment Corp. (hereinafter "Monitor").

2. During the years 1967, 1968 and until July 6, 1969, petitioner was both treasurer and vice-president of Monitor.

3. During the aforesaid period, petitioner had control of Monitor's corporate books, as well as the authority to sign checks and all tax returns. Petitioner controlled all available corporate funds and directed which expenses were to be paid. Petitioner contended that due to Monitor's financial condition, only those expenses which directly affected its daily operations were paid. He claimed that he could not direct payment of taxes withheld during the period at issue, since the funds were no longer available.

4. Petitioner also contended that the penalty under section 685(g) of the Tax Law should be imposed against G.M. Gibson, Monitor's president, and not against him, as the taxes withheld by the corporation during the years 1967, 1968 and until July 6, 1969 were not remitted to New York State upon the direct instructions of G.M. Gibson. Petitioner further contended that during the years 1967, 1968 and until July 6, 1969, he was forced by G.M. Gibson to pay all the maintenance expenses of a twenty-five room mansion owned by Gibson from corporate funds, including expenses for real estate taxes, upkeep, gardening services and the salaries of personal servants of G.M. Gibson and his wife. Monitor occupied only two rooms in the mansion.

5. Petitioner resigned, effective July 7, 1969, and was no longer affiliated with Monitor after that date.

CONCLUSIONS OF LAW

A. That petitioner, Felix Storch, was a person who willfully failed to collect, truthfully account for and pay over personal income taxes withheld by Monitor Equipment Corp. during the period January 1, 1967 through July 6, 1969, in accordance with the meaning and intent of sections 685(g) and 685(n) of the Tax Law.

B. That the petition of Felix Storch is granted to the extent of cancelling the penalty pursuant to section 685(g) of the Tax Law for the period after July 6, 1969.

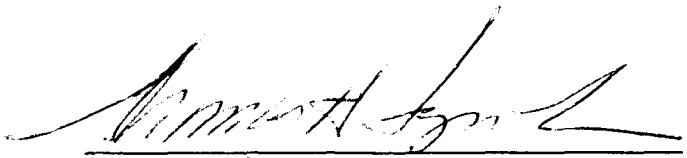
C. That the Income Tax Bureau is hereby directed to accordingly modify the Notice of Deficiency issued June 29, 1970, but that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York
March 16, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER