

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition

of

PAUL STAMBOLIS

for Redetermination of a Deficiency or for  
Refund of New York State Personal Income Tax  
under Article 22 of the Tax Law and New York  
City Personal Income Tax under Chapter 46,  
Title T of the Administrative Code of the City :  
of New York for the Periods August 16, 1978 :  
through December 31, 1978 and January 1, 1979 :  
through December 31, 1979.

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DECISION

In the Matter of the Petition

of

GEORGIA ~~S~~ :

for Redetermination of a Deficiency or for  
Refund of New York State Personal Income Tax  
under Article 22 of the Tax Law and New York  
City Personal Income Tax under Chapter 46,  
Title T of the Administrative Code of the City :  
of New York for the Periods August 16, 1978 :  
through December 31, 1978 and January 1, 1979 :  
through December 31, 1979.

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Petitioner, Paul Stambolis, 60 West 57th Street, New York, New York 10019,  
filed a petition for redetermination of a deficiency or for refund of New York  
State personal income tax under Article 22 of the Tax Law and New York City  
personal income tax under Chapter 46, Title T of the Administrative Code of the  
City of New York for the periods August 16, 1978 through December 31, 1978 and  
January 1, 1979 through December 31, 1979 (File No. 62933).

Petitioner, Georgia Sambazis, c/o Kirkiles & Kotiadis, P.C., 29 Broadway,  
New York, New York 10006, filed a petition for redetermination of a deficiency

Law and New York City personal income tax under Chapter 46, Title T of the Administrative Code of the City of New York **for** the periods August 16, 1978 through December 31, 1978 and January 1, 1979 through December 31, 1979 (File No. 62940).

A consolidated hearing was held before Frank A. Landers, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on February 23, 1987 at 1:15 P.M. Petitioners appeared by Kirkiles & Kotiadis, P.C. (Charles Kirkiles, P.A.). The Audit Division appeared by John P. Dugan, Esq. (Mark F. Volk, Esq., of counsel).

#### ISSUE

Whether the deficiencies asserted against petitioners by the Audit Division for the period at issue have, in fact, been paid by Plaka Enterprises, Inc.

#### FINDINGS OF FACT

1. On April 29, 1985, the Audit Division issued a Notice of Deficiency, along with a Statement of Deficiency, asserting a penalty pursuant to section 685(g) of the Tax Law against petitioner Paul Stambolis as a person required to collect, truthfully account for and pay over withholding taxes of Plaka Enterprises, Inc. in the amount of \$10,435.05 for the periods August 16, 1978 through December 31, 1978 (\$5,141.95) and January 1, 1979 through December 31, 1979 (\$5,293.10). On the same date, a similar notice was issued against petitioner Georgia Sambazis in the same amount and for the same period.

2. On July 2, 1985, each of the petitioners herein timely filed a petition for a hearing to review the Notice of Deficiency. Petitioners claim that the New York State and New York City withholding taxes at issue were paid by Plaka Enterprises, Inc. from the proceeds of the sale of business assets of said corporation which occurred on August 6, 1979 and the collection of said

notes from said sale as they became due and payable. Petitioners maintain that said payments were not properly credited to their account by the Department of Taxation and Finance. Lastly, petitioners complained that prior to receipt of the abovementioned notices of deficiency, they were never advised that taxes might be due.

3. At the hearing, petitioners admitted their liability and, further, indicated that the sole reason for protesting the notices was to prove that the taxes were paid. Petitioners indicated that the records have been lost and they have not, otherwise, been able to find proof of payment.

#### CONCLUSIONS OF LAW

A. That the personal income tax imposed by Chapter 46, Title T of the Administrative Code of the City of New York is by its own terms tied into and contains essentially the same provisions as Article 22 of the Tax Law. Therefore in addressing the issues presented herein, unless otherwise specified all references to particular sections of Article 22 shall be deemed references (though uncited) to the corresponding sections of Chapter 46, Title T.

B. That where a person is required to collect, truthfully account for and pay over withholding tax and willfully fails to collect and pay over such tax, section 685(g) of the Tax Law imposes on such person "a penalty equal to the total amount of tax evaded, or not collected, or not accounted for and paid over."


C. That petitioners have failed to sustain the burden of proof required to show that the taxes at issue have been paid.

D. That the petitions of Paul Stambolis and Georgia Sambazis are denied and the notices of deficiency dated April 29, 1985 **are** sustained.

DATED: Albany, New York

STATE TAX COMMISSION

AUG 14 1987

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER