

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition~

of

ARTHUR SIEGEL

For a Redetermination of a Deficiency or
a Refund of Personal Income
Taxes under Article(s) 22 of the
Tax Law for the (Year(s) 1965

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

State of New York
County of Albany

Martha Funaro , 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 1st day of August , 1972, she served the within
Notice of Decision (or Determination) by (certified) mail upon Arthur Siegel

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: Arthur Siegel
255-44 148th Road
Rosedale, New York 11422

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

1st day of August , 1972

Lynn Wilson

Martha Funaro



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

NORMAN F. GALLMAN, PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

BUILDING 9, ROOM 214A

STATE CAMPUS
ALBANY, N. Y. 12227

AREA CODE 518
457-2655, 6, 7

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

Dated: Albany, New York

August 1, 1972

**Arthur Siegel
255-44 148th Road
Rosedale, New York 11422**

Dear Mr. Siegel:

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

Please take further notice that pursuant to section(s)
690 of the Tax Law any proceeding
in court to review an adverse decision must be commenced
within **4 Months** after the date of this notice.

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

Very truly yours,

Paul B. Coburn
Hearing Officer

cc Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :

of :

ARTHUR SIEGEL : DECISION

for Redetermination of Deficiency or for :
Refund of Personal Income Tax under
Article 22 of the Tax Law for the Year :
1965.

Petitioner, Arthur Siegel, has filed a petition for redetermination of deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1965 (File No. 11-1985556). A formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York, on January 19, 1972, at 10:50 A.M. Petitioner appeared pro se. The Income Tax Bureau appeared by Saul Heckelman, Esq. (Francis X. Boylan, Esq. of Counsel).

ISSUE

Is petitioner, Arthur Siegel, liable for unpaid New York State withholding taxes due from Duke Demolition Co., Inc. for the period January 1, 1965 through June 30, 1965?

FINDINGS OF FACT

1. Duke Demolition Co., Inc. failed to pay over to the Income Tax Bureau New York State personal income taxes withheld from its employees for the period from January 1, 1965 through June 30, 1965, in the sum of \$2,915.22. Subsequently, the Income Tax Bureau received \$1,401.14 which was applied to the withholding taxes owing, leaving a balance due of \$1,514.08. The corporation is presently defunct.

2. On April 11, 1969, the Income Tax Bureau issued a Statement of Deficiency against petitioner, Arthur Siegel, equal to the amount of New York State withholding taxes due from Duke Demolition Co., Inc. for the period from January 1, 1965 through June 30, 1965 upon 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, and accordingly issued a Notice of Deficiency in the sum of \$1,514.08.

3. Petitioner, Arthur Siegel, was employed by Duke Demolition Co., Inc. in May or June, 1964. His employment was terminated in June, 1965. He was hired as a coordinator to oversee the office and the work in the field. He was given the title of secretary of the corporation. He did not own any stock in the corporation. He was not a director of the corporation. He received a fixed salary each week from the corporation. He did not receive any bonuses.

4. Lou Christy was the president and sole stockholder of Duke Demolition Co., Inc. Although petitioner, Arthur Siegel, was secretary of the corporation, cosigned checks with Mr. Christy, and signed one of the New York State tax returns, he was a subordinate officer whose activities were subject to the dictates of Mr. Christy, president and chief executive officer, and while Mr. Christy obtained information and cooperation from petitioner, Arthur Siegel, from time to time, petitioner, Arthur Siegel, had no authority to make decisions as to what creditors or what taxes should or should not be paid. It was Mr. Christy who made the final decisions as to what creditors and what taxes should or should not be paid.

CONCLUSIONS OF LAW

A. That petitioner, Arthur Siegel, as secretary and office coordinator of Duke Demolition Co., Inc. was not a person required to collect, truthfully account for and pay over New York State personal income withholding taxes due from said corporation for the period from January 1, 1965 through June 30, 1965, in accordance with the meaning and intent of sections 674 and 685(1) of the Tax Law since he acted only in a subordinate capacity, had no voice in the policy or decision-making process and had no authority to determine which creditors or taxes should be paid. Sherwood v. United States of America 65-2 USTC ¶9530.

B. That since petitioner, Arthur Siegel, was not a person required to collect, truthfully account for and pay over New York State personal income withholding taxes due from Duke Demolition Co., Inc. for the period from January 1, 1965 through June 30, 1965, therefore, a penalty equal to the total amount of 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 Arthur Siegel is granted and the Notice of Deficiency issued April 11, 1969, is cancelled.

DATED: Albany, New York

August 1, 1972

STATE TAX COMMISSION

Norman Galtman

COMMISSIONER

Bruce Marley

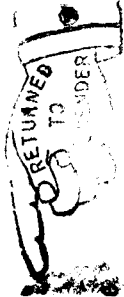
COMMISSIONER

Wilton Kerner

COMMISSIONER

STATE OF NEW YORK
Department of Taxation and Finance

STATE CAMPUS
ALBANY, N. Y. 12227



RECEIVED
JUN 19 1960
✓
Do NOT detach this envelope

Arthur Siegel

255-44 148th Road

Rosedale, New York 11422

CERTIFIED

No. 592656

MAIL