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STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition  
of  
LEON GOLDSMITH & MARION GOLDSMITH  
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) 1962

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

State of New York  
County of Albany

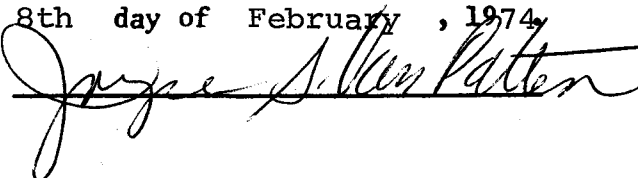
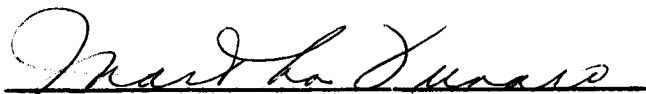
Martha Funaro , being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 8th day of February , 1974 , she served the within Notice of Decision (or Determination) by (certified) mail upon Leon & Marion Goldsmith (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mr. & Mrs. Leon Goldsmith  
15 Magaw Place  
New York, 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 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

8th day of February , 1974

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

LEON GOLDSMITH & MARION GOLDSMITH

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) 1962

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 8th day of February , 19 74, she served the within Notice of Decision (or Determination) by (certified) mail upon Jerald Krupka

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

wrapper addressed as follows: Mr. Jerald Krupka  
525 Chestnut Lane  
East Meadow, 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 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

8th day of February , 1974

Jayce S. Van Patten

Martha Funaro



STATE OF NEW YORK .  
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A

STATE CAMPUS

ALBANY, N. Y. 12226

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION  
HEARING UNIT

EDWARD ROOK  
SECRETARY TO  
COMMISSION

STATE TAX COMMISSION

Mario A. Procaccino,  
~~XXXXXXXXXXXX~~ PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

ADDRESS YOUR REPLY TO

Dated: Albany, New York

**February 8, 1974**

**Mr. & Mrs. Leon Goldsmith  
15 Mayaw Place  
New York, New York**

**Dear Mr. & Mrs. Goldsmith:**

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 deci-  
sion must be commenced within **4 Months**  
from 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 relative  
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

Enc.

cc: Petitioner's Representative  
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
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 of :  
 :  
 LEON GOLDSMITH and :  
 MARION GOLDSMITH : DECISION  
 :  
 for Redetermination of Deficiency or :  
 for Refund of Personal Income Tax :  
 under Article 22 of the Tax Law for :  
 the Year 1962. :  
 :  
 :  
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Petitioners, Leon Goldsmith and Marion Goldsmith, have filed a petition for redetermination of deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1962 (File No. 13-1764836).

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 14, 1974, at 1:30 P.M. Petitioners appeared by Jerald Krupka. The Income Tax Bureau appeared by Saul Heckelman, Esq., (Solomon Sies, Esq., of Counsel).

ISSUE

Is petitioner, Leon Goldsmith, liable for unpaid New York State withholding taxes due from A. A. Switchboard Co., Inc., for the period January 1, 1962 through March 19, 1962?

FINDINGS OF FACT

1. A. A. Switchboard 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, 1962 through

March 19, 1962 in the sum of \$341.12. The corporation filed a petition in bankruptcy during the year 1962 subsequent to March 19th. The corporation did not file withholding tax returns for said period.

2. On November 25, 1968, the Income Tax Bureau issued a Statement of Deficiency against petitioner, Leon Goldsmith, imposing a penalty equal to the amount of New York State withholding taxes due from A. A. Switchboard Co., Inc., for the period from January 1, 1962 through March 19, 1962 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. In accordance with the aforesaid Statement of Deficiency, it issued a Notice of Deficiency against him in the sum of \$341.12.

3. No claim is being made by the Income Tax Bureau against petitioner, Marion Goldsmith, in connection with unpaid withholding taxes of A. A. Switchboard Co., Inc., and a Notice of Deficiency has not been issued against her.

4. Petitioner, Leon Goldsmith, was President of A. A. Switchboard Co., Inc., during the period from January 1, 1962 through March 19, 1962. He signed checks and payroll statements and generally ran the corporation. He conceded at the formal hearing that he was a responsible officer who willfully failed to withhold, account for, and pay over New York State withholding taxes due from said corporation for said period, but contended that there were sufficient funds in the corporate bankruptcy proceedings to pay the taxes due. The Income Tax Bureau has not received payment of

the amount of the claimed deficiency in the corporate bankruptcy proceedings.

CONCLUSIONS OF LAW

A. That petitioner, Leon Goldsmith, as an officer of A. A. Switchboard Co., Inc., was a person required to collect, truthfully account for, and pay over New York State withholding taxes due from said corporation for the period from January 1, 1962 through March 19, 1962 in accordance with the meaning and intent of sections 674 and 685(1) of the Tax Law.

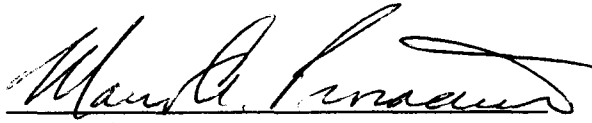
B. That since petitioner, Leon Goldsmith, willfully failed or caused A. A. Switchboard Co., Inc., to willfully fail to collect, truthfully account for, and pay over New York State withholding taxes due from said corporation for the period from January 1, 1962 through March 19, 1962, therefore, a penalty equal to the total amount of the unpaid withholding taxes was properly assessed against him in accordance with the meaning and intent of section 685(g) of the Tax Law.

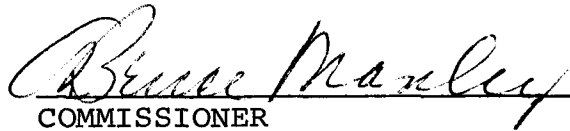
C. That the Income Tax Bureau is under no requirement to attempt to collect unpaid withholding taxes from A. A. Switchboard Co., Inc., in the corporate bankruptcy proceedings before imposing and collecting from responsible officers such as petitioner, Leon Goldsmith, the penalty provided for by section 685(g) of the Tax Law. Petition of Harry Greenberg, Decision of the State Tax Commission, November 20, 1973.


D. That the petition of Leon Goldsmith and Marion Goldsmith is denied and the Notice of Deficiency issued November 25, 1968 against petitioner, Leon Goldsmith, is sustained.

DATED: Albany, New York  
February 8, 1974

STATE TAX COMMISSION

  
COMMISSIONER

  
COMMISSIONER

  
COMMISSIONER