

STATE OF NEW YORK  
STATE TAX COMMISSION

\_\_\_\_\_ :  
In the Matter of the Petition :  
of :  
Gerald Finkel :  
for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of :  
Personal Income Tax :  
under Article 22 of the Tax Law :  
for the Years 1972, 1973. :  
\_\_\_\_\_ :

AFFIDAVIT OF MAILING

State of New York  
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 28th day of March, 1980, he served the within notice of Decision by certified mail upon Gerald Finkel, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

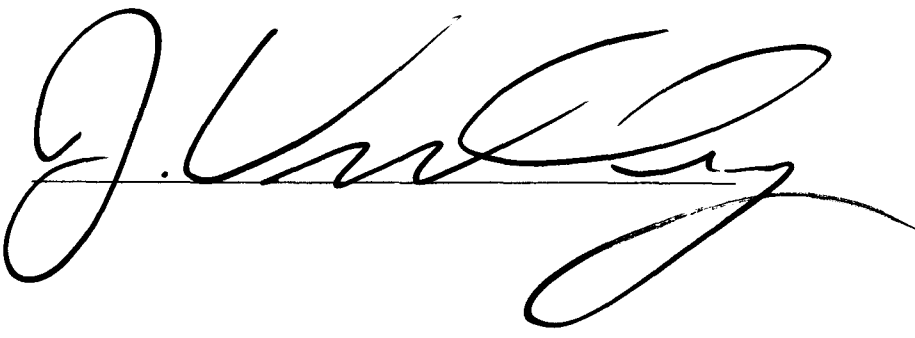
Gerald Finkel  
32 Lake St.  
Setauket, NY 11733

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 petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this  
28th day of March, 1980.

Joanne Knapp



STATE OF NEW YORK  
STATE TAX COMMISSION

\_\_\_\_\_  
In the Matter of the Petition :  
of :  
Gerald Finkel :  
for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of :  
Personal Income Tax :  
under Article 22 of the Tax Law :  
for the Years 1972, 1973. \_\_\_\_\_ :

AFFIDAVIT OF MAILING

State of New York  
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 28th day of March, 1980, he served the within notice of Decision by certified mail upon William Gold the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

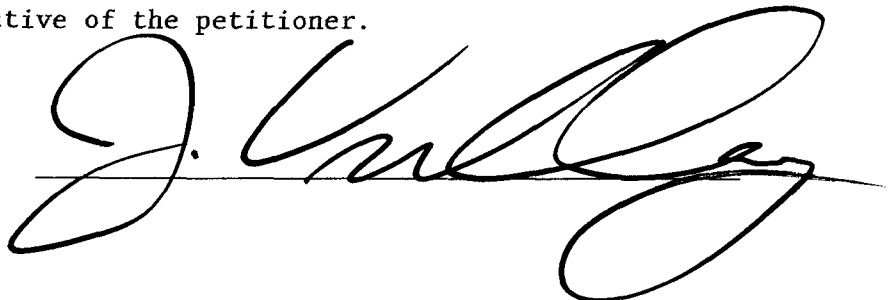
Mr. William Gold  
99 Park Ave.  
New York, NY 10016

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 the 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  
28th day of March, 1980.

Joanne Krapp



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

March 28, 1980

Gerald Finkel  
32 Lake St.  
Setauket, NY 11733

Dear Mr. Finkel:

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(s) 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:

NYS Dept. Taxation and Finance  
Deputy Commissioner and Counsel  
Albany, New York 12227  
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
William Gold  
99 Park Ave.  
New York, NY 10016  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
GERALD FINKEL : DECISION  
for Redetermination of a Deficiency or for :  
Refund of Personal Income Tax under Article 22 :  
of the Tax Law for the Years 1972 and 1973. :

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Gerald Finkel, 32 Lake Street, Setauket, New York 11733, 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 1972 and 1973 (File No. 15752).

A formal hearing was held before James T. Prendergast, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on September 19, 1978 at 11:15 A.M. Petitioner appeared by William Gold, Esq. The Audit Division appeared by Peter Crotty, Esq. (Paul A. Lefebvre, Esq. of counsel).

ISSUE

Whether petitioner was a person responsible for remitting withholding taxes.

FINDINGS OF FACT

1. Autochem Laboratories, Inc. ("Autochem") filed New York State employer's returns for personal income tax withheld for the following periods and amounts:

1/1 - 1/15/73	\$ 1,799.45
1/16 - 1/31/73	1,799.45
2/16 - 2/28/73	1,909.70
3/16 - 3/31/73	2,443.80
4/1 - 4/15/73	909.80
4/16 - 4/30/73	805.80
5/1 - 5/15/73	867.40
5/16 - 5/30/73	40.70
	<hr/>
	\$10,576.10

2. Autopath Laboratories, Inc. ("Autopath") filed New York State employer's

returns for personal income tax withheld for the following periods and amounts:

7/1 - 9/30/72	\$483.60
4/1 - 4/30/73	<u>72.28</u>
	\$555.88

3. On March 31, 1975 a Statement of Deficiency and a Notice of Deficiency were issued against petitioner, Gerald Finkel, for 1972 and 1973, for withholding taxes due from Autochem and Autopath in the amount of \$11,131.98.

4. Petitioner subsequently filed a timely petition and a perfected petition for revision of the deficiency.

5. Of the \$10,576.10 due from Autochem, only \$927.38 has been received leaving a balance due of \$9,648.72.

6. Of the \$555.88 due from Autopath nothing has been received; therefore, the full amount is still due.

7. Until March of 1972, Autopath's business was operated as a proprietorship; it was then incorporated and its shares were owned solely by Gerald Finkel, petitioner herein. In March of 1972, Autochem acquired all the stock of Autopath from Gerald Finkel. Finkel exchanged his Autopath stock for stock in Autochem. Autopath became a wholly-owned subsidiary of Autochem and Autopath was totally controlled by it and its officers.

8. After March of 1972, petitioner, Gerald Finkel, was a director of Autochem, the parent company and may have been a director of Autopath, the subsidiary. He was an officer of neither company. He had no financial responsibilities in either company during the period in question. He could not sign checks, and took no part in deciding which bills were paid. His responsibilities were exclusively those of an employee who was responsible for the technical side of the business, namely, laboratory tests.

CONCLUSIONS OF LAW

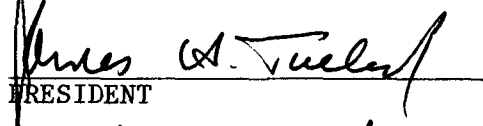
A. That petitioner, Gerald Finkel, was not a person required to collect, truthfully account for, and pay over the withholding taxes due from Autochem Laboratories, Inc. and Autopath Laboratories, Inc., within the meaning of subsection (n) of section 685 of the Tax Law and thus is not liable to a penalty under subsection (g) of section 685 of the Tax Law.

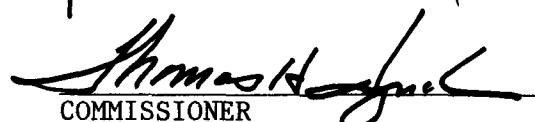
B. That the petition of Gerald Finkel is granted and the Notice of Deficiency is cancelled.

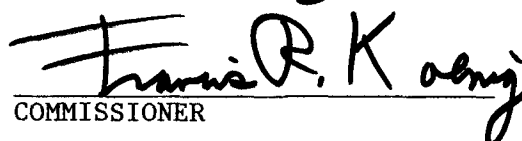
DATED: Albany, New York

MAR 28 1980

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER