

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
George Seitz :
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 :
1976 & 1977. :

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 20th day of November, 1981, he served the within notice of Decision by certified mail upon George Seitz, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

George Seitz
54 Alpine Pl.
Buffalo, NY 14225

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
20th day of November, 1981.

Annie A. Skuplinski

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
George Seitz :
AFFIDAVIT OF MAILING
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 :
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State of New York
County of Albany

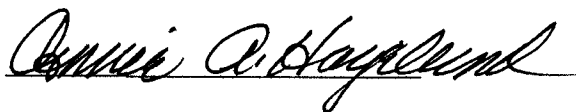
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 20th day of November, 1981, he served the within notice of Decision by certified mail upon Ralph Nicosia the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

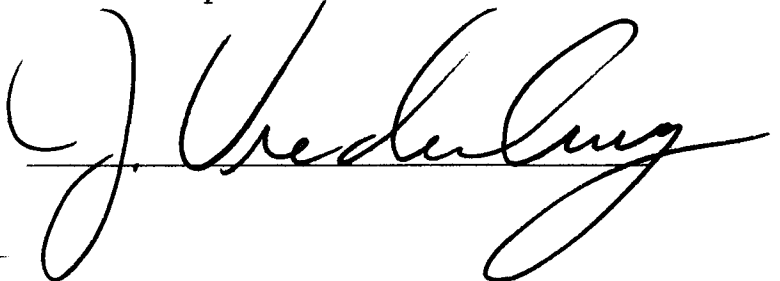
Ralph Nicosia
716 Brisbane Bldg.
Buffalo, NY 14203

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
20th day of November, 1981.





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

November 20, 1981

George Seitz
54 Alpine Pl.
Buffalo, NY 14225

Dear Mr. Seitz:

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
Ralph Nicosia
716 Brisbane Bldg.
Buffalo, NY 14203
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
GEORGE SEITZ	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Years 1976 and 1977.	:	

Petitioner, George Seitz, 54 Alpine Place, Buffalo, New York 14225, 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 1976 and 1977 (File No. 26112).

A formal hearing was held before Doris Steinhardt, Hearing Officer, at the offices of the State Tax Commission, State Office Building, 65 Court Street, Buffalo, New York, on July 10, 1981 at 9:00 A.M. Petitioner appeared by Ralph A. Nicosia, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Patricia L. Brumbaugh, Esq., of counsel).

ISSUE

Whether petitioner was a person required to collect, truthfully account for and pay over withholding taxes of S & W Interiors, Inc. during the periods at issue, who willfully failed to do so, and is therefore liable for the penalty imposed under subdivision (g) of section 685 of the Tax Law.

FINDINGS OF FACT

1. On October 30, 1978, the Audit Division issued to petitioner George Seitz a Notice of Deficiency and a Statement of Deficiency, asserting penalties equal to the amount of New York State withholding taxes of S & W Interiors, Inc. which were due and unpaid for the periods at issue, as follows:

<u>PERIOD</u>	<u>AMOUNT</u>
2/1/76 - 12/31/76	\$38,605.57
1/1/77 - 10/28/77	38,623.05
	<u>\$77,228.62</u>

2. For approximately fifty years, petitioner owned George Seitz, Inc., a corporation engaged in the business of lathing and plastering. Mr. Seitz' home, as well as the corporate office and warehouse, were located at 90 Sugg Road, Buffalo, New York. The employer identification number assigned to and used by the corporation was 16-0988576. Mr. Seitz' son, Lee G. Seitz, was employed as an estimator.

3. S & W Interiors, Inc. ("S & W") was organized under the laws of this state in 1972. It was engaged in the business of plastering (especially, drywall) as a subcontractor, and had its principal office at 501 West Commercial Street, East Rochester, New York. Lee G. Seitz held the office of president; Mr. Theodore Weber, who previously owned Consolidated Interiors, Inc., held the office of vice president. Petitioner held the offices of secretary and treasurer.

4. Petitioner was requested to purchase one-sixth of the stock of S & W. He did so at a cost of approximately \$1,630, which he obtained through borrowing. He never received any dividend on his shares.

In addition, petitioner guaranteed a loan made to S & W by the Liberty Bank in 1977.

5. At the time S & W began operations, petitioner decided to enter retirement and so the business activities of George Seitz, Inc. ceased. Petitioner thereafter spent the months of November through May at his Florida residence.

6. S & W filed semi-monthly returns showing amounts withheld from employee wages, and used the same employer identification number which had been allotted

to George Seitz, Inc. The pre-printed semi-monthly returns bore the names of three corporations, George Seitz, Inc., Consolidated Interiors, Inc. and S & W Interiors, Inc., and the Sugg Road address. One Martha Heid completed and signed the returns for S & W and used the George Seitz, Inc. identification number without informing petitioner or obtaining his authorization.

S & W filed a Reconciliation of Personal Income Tax Withheld (IT-2103) for 1976, reflecting \$46,815.41 withheld based upon 150 individual wage and tax statements submitted therewith. The Reconciliation was signed by Theodore Weber.

7. Petitioner did not perform any duties associated with the offices he held in S & W nor was he employed by the corporation. He received no salary or other compensation. Neither Lee G. Seitz nor Mr. Weber ever conferred with petitioner or consulted him regarding the business. Whenever petitioner inquired about the financial condition of S & W, he was told it was good. While petitioner was wintering in Florida, he received no communication whatsoever from Lee G. Seitz or Theodore Weber.

8. Petitioner had authority to sign checks on the S & W account but never did so.

9. All S & W books and records were maintained by Mr. Weber in East Rochester. All payroll checks were issued from the East Rochester office.

10. Mr. Nicosia, who represents petitioner in the instant matter, had also represented Mr. Lee G. Seitz on occasion. He made numerous attempts to examine the S & W books and to elicit information from Mr. Weber about the corporation's financial condition, but his efforts were unavailing. Mr. Weber finally offered an estimate of the corporation's liability, which included a small amount of Federal and State withholding taxes.

11. A true picture of S & W's financial difficulties did not emerge until discussions were held in Mr. Nicosia's office, which Mr. Lee G. Seitz, Mr. Weber, Mr. Weber's attorney and petitioner attended. This was the first time petitioner was made aware of the accruing debts and withholding tax liabilities.

Shortly after the discussions, the parties determined that the corporation should file bankruptcy. The filing was made on October 28, 1977.

12. On Schedule D, Capital Gains and Losses, attached to petitioner's Federal and State personal income tax returns for 1977, petitioner showed a short-term capital loss (non-business bad debt) of \$16,595, resulting from S & W's default on the Liberty Bank loan.

CONCLUSIONS OF LAW

A. That in determining whether petitioner is liable for the penalty asserted against him pursuant to subdivision (g) of section 685 of the Tax Law, the threshold question is whether he was a person required to collect, truthfully account for and pay over taxes withheld from the wages of employees of S & W Interiors, Inc. Section 685(n). Relevant factors include whether petitioner signed tax returns, derived a substantial portion of his income from the corporation and exercised authority over the employees and assets of the corporation. MacLean v. State Tax Comm., 69 A.D.2d 951 (3rd Dept.), affd. 49 N.Y.2d 920 (1980); McHugh v. State Tax Comm., 70 A.D.2d 987 (3rd Dept. 1979); Malkin v. Tully, 65 A.D.2d 228 (3rd Dept. 1978).

B. That petitioner George Seitz did none of the foregoing. He did not have access to the books and records of S & W nor did he prepare or sign any tax return. The employer identification number of his own corporation (George Seitz, Inc.) was used by S & W without his knowledge. Although petitioner was a registered signatory on the corporate checking account, he never exercised

this authority. He made a small investment in S & W and acted as guarantor on a loan, apparently because of the familial relationship involved, and sustained a substantial loss as a result. Under such circumstances, the holding of corporate office is not sufficient in itself to impose the penalty upon him.

C. That the petition of George Seitz is hereby granted, and the Notice of Deficiency issued October 30, 1978, is cancelled in full.

DATED: Albany, New York

NOV 20 1981

STATE TAX COMMISSION



PRESIDENT



COMMISSIONER



COMMISSIONER

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

November 20, 1981

George Seitz
54 Alpine Pl.
Buffalo, NY 14225

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Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Ralph Nicosia
716 Brisbane Bldg.
Buffalo, NY 14203
Taxing Bureau's Representative

TA 26 (9-79)
STATE OF NEW YORK
State Tax Commission
TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N. Y. 12227

CLAIM CHECK
NO.

27417

☐ HOLD

DATE

11/21/81
1ST NOTICE

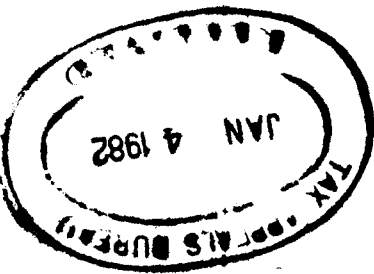
AND NOTICE

11-28

12-8

George Beitz
54 Alpine Pl.
Buffalo, NY 14225

UNCLAIMED



Unclaimed

P34 2458504

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
GEORGE SEITZ	:	DECISION
	:	
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
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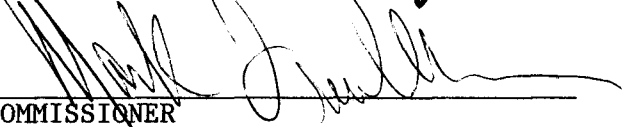
STATE TAX COMMISSION



PRESIDENT



COMMISSIONER



COMMISSIONER