

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Philip Sambanidis : AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Personal Income :
Tax under Article 22 of the Tax Law for the Years :
1973, 1974 & 1975. :

State of New York }
ss.:
County of Albany }

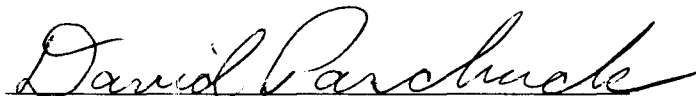
David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 18th day of January, 1984, he served the within notice of Decision by certified mail upon Philip Sambanidis, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Philip Sambanidis
148-49 Hook Creek Blvd.
Rosedale, NY

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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
18th day of January, 1984.




pursuant to Tax Law section 174

Authorized to administer oaths

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

January 18, 1984

Philip Sambanidis
148-49 Hook Creek Blvd.
Rosedale, NY

Dear Mr. Sambanidis:

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, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only under Article 78 of the Civil Practice Law 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
Law Bureau - Litigation Unit
Building #9, State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Martin R. Friedman
O'Rourke & Friedman
2053 Flatbush Ave.
Brooklyn, NY 11234
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
PHILIP SAMBANIDIS	:	DECISION
	:	
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article	:	
22 of the Tax Law for the Years 1973, 1974	:	
and 1975.	:	

Petitioner, Philip Sambanidis, 148-49 Hook Creek Boulevard, Rosedale, New York, 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 1973, 1974 and 1975 (File No. 19003).

A small claims hearing was held before Allen Caplowaith, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 9, 1983 at 2:45 P.M. Petitioner appeared with Martin R. Friedman. The Audit Division appeared by John P. Dugan, Esq. (Paul Lefebvre, Esq., of counsel).

ISSUE

Whether petitioner, Philip Sambanidis, is subject to a penalty, pursuant to section 685(g) of the Tax Law, as a person who willfully failed to collect, truthfully account for, and pay over the New York State withholding taxes due from Pagan Laboratories, Inc.

FINDINGS OF FACT

1. Pagan Laboratories, Inc. ("Pagan"), 122-14 15th Avenue, College Point, New York 11356, failed to pay over the New York State personal income taxes withheld from the wages of its employees for the periods as follows:

<u>Withholding Tax Period</u>	<u>Amount</u>
January 1, 1973 to June 30, 1973	\$ 434.80
February 1, 1974 to February 28, 1974	174.30
March 1, 1974 to March 31, 1974	232.20
April 1, 1974 to April 30, 1974	179.40
May 1, 1974 to May 31, 1974	224.50
June 1, 1974 to June 30, 1974	147.50
July 1, 1974 to July 31, 1974	183.80
August 1, 1974 to August 31, 1974	290.80
September 1, 1974 to September 30, 1974	204.40
October 1, 1974 to October 31, 1974	203.20
November 1, 1974 to November 30, 1974	262.60
December 1, 1974 to December 31, 1974	242.80
January 1, 1975 to January 31, 1975	258.00
February 1, 1975 to February 28, 1975	217.20
March 1, 1975 to March 31, 1975	34.70
April 1, 1975 to April 30, 1975	100.70
September 1, 1975 to September 8, 1975	289.00
Total	<u>\$3,679.90</u>

2. On February 28, 1977, the Audit Division issued a Statement of Deficiency in conjunction with a Notice of Deficiency against petitioner Philip Sambanidis wherein a penalty was asserted pursuant to section 685(g) of the Tax Law for an amount equal to the aforestated New York State withholding taxes due from Pagan. Said penalty was asserted on the grounds that petitioner was a person required to collect, truthfully account for and pay over said taxes, and that he willfully failed to do so.

3. Pagan, a manufacturer of cosmetics and toiletries, filed a petition in bankruptcy under Chapter XI on September 8, 1975. In an affidavit accompanying said petition, Davis Small, president of Pagan, deposed that:

(a) "Davis Small is an officer and director and administrator of the company taking care of the financial matters and runs the day to (day) operation."

(b) "Basis (sic) Sambanidis is Executive Vice President and head of the research department."

(c) "Philip Sambanidis is a director of the corporation and takes care of purchasing and is head of production."

4. Subsequent to Pagan being adjudicated a bankrupt, a small payment of \$33.75 was made, thus reducing the deficiency at issue herein to \$3,646.15.

5. All employer's returns for personal income tax withheld, which were filed by Pagan for each withholding tax period at issue, either bore no signature or were signed by Davis Small or the bookkeeper.

6. During the years at issue Philip Sambanidis (hereinafter petitioner) was an employee of Pagan. He held the title "Assistant to the President" but he was not an officer. The only officers were Davis Small and Basil Sambanidis, petitioner's father.

7. During the years at issue petitioner was a graduate student at Columbia University where he was working towards a masters degree in chemistry and physics. In 1973 and 1974 he worked approximately twenty (20) hours per week for Pagan. During 1975 he worked more than forty (40) hours per week for Pagan. He had no set hours and was paid a weekly salary which ranged from \$80.00 to \$120.00. In 1973 petitioner was twenty-two years old.

8. Petitioner had been working at Pagan with his father, Basil Sambanidis since he was sixteen years old. His duties during the years at issue consisted primarily of translating for his father, who was not fluent in English, dealing with vendors in the purchase of chemicals and working with his father in the laboratory.

9. Petitioner had been a director since he was seventeen years old. He attended board meetings and had voting rights at such meetings.

10. The board of directors was concerned primarily with issues concerning the sale of Pagan's products. The board consisted of five or six people, some of which were outside investors. Determining which creditors should be paid was not a topic of discussion at such board meetings. Petitioner contended that his primary function at the meetings was to translate for his father.

11. Petitioner did not take part in the management of Pagan. He did not have the authority to sign checks. He was not a stockholder and had no power to hire or fire employees. The books, records, financial statements and tax returns were never shown to him.

12. Petitioner alleged that Basil Sambanidis and Davis Small have previously consented to deficiencies asserted against them for amounts and withholding tax periods identical to those at issue herein. The record shows no indication that any payments were made resulting therefrom. Basil Sambanidis had filed for personal bankruptcy but the date of such bankruptcy is not revealed in the record herein.

CONCLUSIONS OF LAW

A. That section 685(g) of the Tax Law provides that:

"Any person required to collect, truthfully account for and pay over the tax imposed by this article who willfully fails to collect such tax or truthfully account for and pay over such tax or willfully attempts in any manner to evade or defeat the tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty equal to the total amount of the tax evaded, or not collected, or not accounted for and paid over."

B. That section 685(n) of the Tax Law provides that:

"For purposes of subsections (g), (i) and (o), the term person includes an individual, corporation or partnership or an officer or employee of any corporation (including a dissolved corporation), or a member or employee of any partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs."

C. That petitioner was not a person required to collect, truthfully account for and pay over the New York State withholding taxes of Pagan for the years at issue herein. Accordingly, the penalty asserted against him under section 685(g) of the Tax Law is hereby cancelled.

D. That the petition of Philip Sambanidis is granted and the Notice of Deficiency dated February 28, 1977 is cancelled.

DATED: Albany, New York

STATE TAX COMMISSION

JAN 18 1984

Rodnicko Clem
PRESIDENT

Francis R. Koenig
COMMISSIONER

Mark J. Jankowski
COMMISSIONER

TA 26 (9-79)

STATE OF NEW YORK
State Tax Commission
TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N. Y. 12227



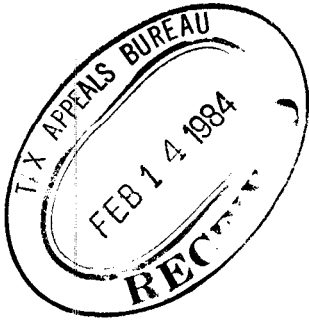
RETURN TO
SENDER

REASON CHECKED

Unclaimed
Addressee Unknown
Insufficient Address
No such Street

Do not retape in this envelope

Philip Sambanidas
148-49 Hook Creek Blvd.
Rosedale, NY



CERTIFIED

P 440 976 749

MAIL

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

January 18, 1984

Philip Sambanidis
148-49 Hook Creek Blvd.
Rosedale, NY

Dear Mr. Sambanidis:

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, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only under Article 78 of the Civil Practice Law 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
Law Bureau - Litigation Unit
Building #9, State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Martin R. Friedman
O'Rourke & Friedman
2053 Flatbush Ave.
Brooklyn, NY 11234
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
PHILIP SAMBANIDIS	:	DECISION
	:	
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article	:	
22 of the Tax Law for the Years 1973, 1974	:	
and 1975.	:	

Petitioner, Philip Sambanidis, 148-49 Hook Creek Boulevard, Rosedale, New York, 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 1973, 1974 and 1975 (File No. 19003).

A small claims hearing was held before Allen Caplowaith, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 9, 1983 at 2:45 P.M. Petitioner appeared with Martin R. Friedman. The Audit Division appeared by John P. Dugan, Esq. (Paul Lefebvre, Esq., of counsel).

ISSUE

Whether petitioner, Philip Sambanidis, is subject to a penalty, pursuant to section 685(g) of the Tax Law, as a person who willfully failed to collect, truthfully account for, and pay over the New York State withholding taxes due from Pagan Laboratories, Inc.

FINDINGS OF FACT

1. Pagan Laboratories, Inc. ("Pagan"), 122-14 15th Avenue, College Point, New York 11356, failed to pay over the New York State personal income taxes withheld from the wages of its employees for the periods as follows:

<u>Withholding Tax Period</u>	<u>Amount</u>
January 1, 1973 to June 30, 1973	\$ 434.80
February 1, 1974 to February 28, 1974	174.30
March 1, 1974 to March 31, 1974	232.20
April 1, 1974 to April 30, 1974	179.40
May 1, 1974 to May 31, 1974	224.50
June 1, 1974 to June 30, 1974	147.50
July 1, 1974 to July 31, 1974	183.80
August 1, 1974 to August 31, 1974	290.80
September 1, 1974 to September 30, 1974	204.40
October 1, 1974 to October 31, 1974	203.20
November 1, 1974 to November 30, 1974	262.60
December 1, 1974 to December 31, 1974	242.80
January 1, 1975 to January 31, 1975	258.00
February 1, 1975 to February 28, 1975	217.20
March 1, 1975 to March 31, 1975	34.70
April 1, 1975 to April 30, 1975	100.70
September 1, 1975 to September 8, 1975	289.00
Total	<u>\$3,679.90</u>

2. On February 28, 1977, the Audit Division issued a Statement of Deficiency in conjunction with a Notice of Deficiency against petitioner Philip Sambanidis wherein a penalty was asserted pursuant to section 685(g) of the Tax Law for an amount equal to the aforestated New York State withholding taxes due from Pagan. Said penalty was asserted on the grounds that petitioner was a person required to collect, truthfully account for and pay over said taxes, and that he willfully failed to do so.

3. Pagan, a manufacturer of cosmetics and toiletries, filed a petition in bankruptcy under Chapter XI on September 8, 1975. In an affidavit accompanying said petition, Davis Small, president of Pagan, deposed that:

(a) "Davis Small is an officer and director and administrator of the company taking care of the financial matters and runs the day to (day) operation."

(b) "Basis (sic) Sambanidis is Executive Vice President and head of the research department."

(c) "Philip Sambanidis is a director of the corporation and takes care of purchasing and is head of production."

4. Subsequent to Pagan being adjudicated a bankrupt, a small payment of \$33.75 was made, thus reducing the deficiency at issue herein to \$3,646.15.

5. All employer's returns for personal income tax withheld, which were filed by Pagan for each withholding tax period at issue, either bore no signature or were signed by Davis Small or the bookkeeper.

6. During the years at issue Philip Sambanidis (hereinafter petitioner) was an employee of Pagan. He held the title "Assistant to the President" but he was not an officer. The only officers were Davis Small and Basil Sambanidis, petitioner's father.

7. During the years at issue petitioner was a graduate student at Columbia University where he was working towards a masters degree in chemistry and physics. In 1973 and 1974 he worked approximately twenty (20) hours per week for Pagan. During 1975 he worked more than forty (40) hours per week for Pagan. He had no set hours and was paid a weekly salary which ranged from \$80.00 to \$120.00. In 1973 petitioner was twenty-two years old.

8. Petitioner had been working at Pagan with his father, Basil Sambanidis since he was sixteen years old. His duties during the years at issue consisted primarily of translating for his father, who was not fluent in English, dealing with vendors in the purchase of chemicals and working with his father in the laboratory.

9. Petitioner had been a director since he was seventeen years old. He attended board meetings and had voting rights at such meetings.

10. The board of directors was concerned primarily with issues concerning the sale of Pagan's products. The board consisted of five or six people, some of which were outside investors. Determining which creditors should be paid was not a topic of discussion at such board meetings. Petitioner contended that his primary function at the meetings was to translate for his father.

11. Petitioner did not take part in the management of Pagan. He did not have the authority to sign checks. He was not a stockholder and had no power to hire or fire employees. The books, records, financial statements and tax returns were never shown to him.

12. Petitioner alleged that Basil Sambanidis and Davis Small have previously consented to deficiencies asserted against them for amounts and withholding tax periods identical to those at issue herein. The record shows no indication that any payments were made resulting therefrom. Basil Sambanidis had filed for personal bankruptcy but the date of such bankruptcy is not revealed in the record herein.

CONCLUSIONS OF LAW

A. That section 685(g) of the Tax Law provides that:

"Any person required to collect, truthfully account for and pay over the tax imposed by this article who willfully fails to collect such tax or truthfully account for and pay over such tax or willfully attempts in any manner to evade or defeat the tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty equal to the total amount of the tax evaded, or not collected, or not accounted for and paid over."

B. That section 685(n) of the Tax Law provides that:

"For purposes of subsections (g), (i) and (o), the term person includes an individual, corporation or partnership or an officer or employee of any corporation (including a dissolved corporation), or a member or employee of any partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs."

C. That petitioner was not a person required to collect, truthfully account for and pay over the New York State withholding taxes of Pagan for the years at issue herein. Accordingly, the penalty asserted against him under section 685(g) of the Tax Law is hereby cancelled.

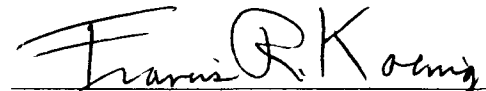
D. That the petition of Philip Sambanidis is granted and the Notice of Deficiency dated February 28, 1977 is cancelled.

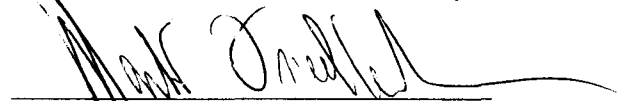
DATED: Albany, New York

STATE TAX COMMISSION

JAN 18 1984


PRESIDENT


COMMISSIONER


COMMISSIONER

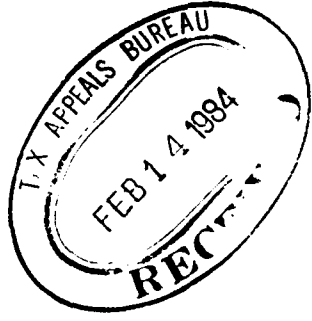
TA 26 (9-79)

STATE OF NEW YORK
State Tax Commission
TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N. Y. 12227



REASON CHECKED
☒ Unclaimed
☐ To Sender
☐ Insufficient Address
☐ Moved—Left no Address
☐ No such Number
☐ No such Street
☐ Do not remain in this envelope

Philip Sambanidis
148-49 Hook Creek Blvd.
Rosedale, NY



CERTIFIED

P 440 976 749

MAIL

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

January 18, 1984

Philip Sambanidis
148-49 Hook Creek Blvd.
Rosedale, NY

Dear Mr. Sambanidis:

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, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only under Article 78 of the Civil Practice Law 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
Law Bureau - Litigation Unit
Building #9, State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Martin R. Friedman
O'Rourke & Friedman
2053 Flatbush Ave.
Brooklyn, NY 11234
Taxing Bureau's Representative