

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Abe & Alice Siegel : 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 :  
1972 & 1973. :

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

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 Abe & Alice Siegel, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:


Abe & Alice Siegel  
90 Rainbow Rd.  
Massapequa Park, NY 11762

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

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In the Matter of the Petition :  
of  
Abe & Alice Siegel : AFFIDAVIT OF MAILING  
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State of New York }  
ss.:  
County of Albany }

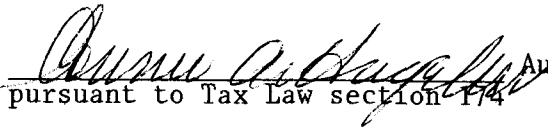
David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 18th day of January, 1984, he served the within notice of Decision by certified mail upon David Siegel, the representative of the petitioner in the within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

David Siegel  
82 Scudders Lane  
Roslyn Harbor, NY 11576

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 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  
18th day of January, 1984.

  
Authorized to administer oaths  
  
pursuant to Tax Law section 174

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

January 18, 1984

Abe & Alice Siegel  
90 Rainbow Rd.  
Massapequa Park, NY 11762

Dear Mr. & Mrs. Siegel:

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  
David Siegel  
82 Scudders Lane  
Roslyn Harbor, NY 11576  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
ABE SIEGEL :  
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. :  
DECISION

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In the Matter of the Petition :  
of :  
ALICE SIEGEL :  
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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Petitioners, Abe Siegel and Alice Siegel, 90 Rainbow Road, Massapequa Park, New York, 11762, filed petitions for redetermination of deficiencies or for refunds of personal income tax under Article 22 of the Tax Law for the years 1972 and 1973 (File Nos. 28336 and 28337).

A consolidated 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 10, 1983 at 2:45 P.M. Petitioners appeared by David Siegel, Esq. The Audit Division appeared by John P. Dugan, Esq. (Paul Lefebvre, Esq., of counsel).

ISSUES

I. Whether petitioner Abe Siegel 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 Star Loose Leaf Company, Inc.

II. Whether petitioner Alice Siegel 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 Star Loose Leaf Company, Inc.

FINDINGS OF FACT

1. Star Loose Leaf Company, Inc. ("Star"), 165 Duane Street, New York, New York 10013, failed to pay over the New York State personal income taxes withheld from the wages of its employees for the following periods:

<u>PERIOD</u>	<u>AMOUNT</u>
April 1 to April 30, 1972	\$ 373.90
May 1 to May 31, 1972	505.30
June 1 to June 30, 1972	414.00
June 1 to June 28, 1973	392.00
Total Due	<u>\$1,685.20</u>

2. On December 28, 1973, the Audit Division issued a Statement of Deficiency in conjunction with a Notice of Deficiency against petitioner Abe Siegel 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 Star. 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. A similar set of documents were issued against petitioner Alice Siegel under the same date. The deficiency asserted therein and the Audit Division's grounds for asserting such deficiency were identical to those of Mr. Siegel.

3. During the periods at issue, petitioner Abe Siegel was president of Star. As such, he was responsible for managing and controlling its business

affairs and operations. All employer's returns of personal income tax withheld which were filed by Star during the periods at issue were signed by Abe Siegel.

4. Petitioner Abe Siegel did not claim that he was not a person responsible for the collection and payment of the withholding taxes at issue. His defense in this matter was as follows:

a) That New York State had, in effect, waived its rights and agreed to be subordinated to payment of the taxes at issue by participating in a Chapter XI form of bankruptcy of Star and that, although sufficient funds were on hand in the possession of the trustee in bankruptcy prior to the Chapter XI, new creditors were given priority over the pre-existing creditors when a Chapter X bankruptcy subsequently followed, thereby leaving no funds available for payment of the taxes at issue herein.

b) That petitioner was denied "due process of the law" and was prejudiced since more than seven (7) years have elapsed between the filing of his petition and the granting of a pre-hearing conference, his petition was not acknowledged, and due to ill health, he was unable to personally appear at the hearing.

5. Petitioners were unable to establish the date of either the Chapter XI or the Chapter X bankruptcy.

6. Petitioner Alice Siegel was the titular vice-president and secretary of Star. Her only duties consisted of routine clerical work, such as filing. She was not involved in the management of Star. Furthermore, she relinquished her officer titles on June 22, 1971, which was prior to the periods at issue herein.

7. In addition to her claim that she was not a person responsible for the collection and payment of the withholding taxes at issue, petitioner Alice

Siegel claims that the defenses used by Abe Siegel are equally applicable to her (see Finding of Fact "4", supra).

8. In the original petitions filed by petitioners, which were received by the Income Tax Bureau on February 7, 1974, they stated that:

"Sufficient funds are on hand in the possession of the Trustee in Bankruptcy of Star Loose Leaf Company, Inc. with which to pay the claim assessed against the taxpayer in full."

9. On February 13, 1974, the Income Tax Bureau issued letters to petitioners wherein it acknowledged receipt of their petitions. Such letters requested that when final bankruptcy proceedings have been adjudicated, petitioners should "advise this office accordingly, so that any necessary adjustments may be made". The record herein shows no indication that petitioners have complied with said request and notified the Bureau at the conclusion of the bankruptcy proceedings.

#### CONCLUSIONS OF LAW

A. That the Audit Division is not required to attempt to collect unpaid withholding taxes from a corporation, or from its trustee in bankruptcy, before imposing on and collecting from responsible officers the penalty imposed by section 685(g) of the Tax Law. Allan I. Jacobson, State Tax Commission, May 21, 1982.

B. That petitioners were neither prejudiced nor denied due process of the law. The record clearly shows that their petitions were acknowledged and that the delay in moving forward was caused by their failure to notify the Income Tax Bureau on completion of the bankruptcy proceedings.

C. That petitioner Abe Siegel was a person who willfully failed to collect, truthfully account for and pay over the New York State withholding

taxes of Star for the periods at issue herein; therefore, he is liable for the penalty imposed pursuant to section 685(g) of the Tax Law.

D. That the petition of Abe Siegel is denied and the Notice of Deficiency issued against him on December 28, 1973 is hereby sustained.

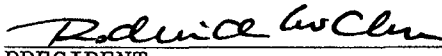
E. That petitioner Alice Siegel was not a person who willfully failed to collect, truthfully account for and pay over the New York State withholding taxes of Star for the periods at issue herein.

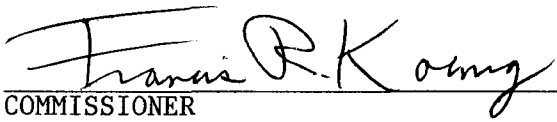
F. That the petition of Alice Siegel is granted and the Notice of Deficiency issued against her on December 28, 1973 is hereby cancelled.

DATED: Albany, New York

STATE TAX COMMISSION

JAN 18 1984

  
PRESIDENT

  
COMMISSIONER

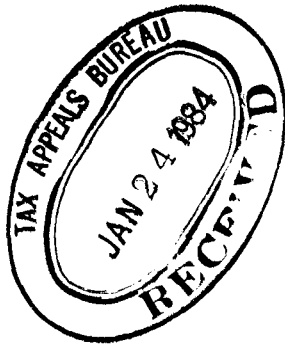
  
COMMISSIONER



TA 26 (9-79)

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

Abe & Alice Siegel  
90 Rainbow Rd.  
Massapequa Park, NY 11762



**CERTIFIED**

**P 440976 752**

**MAIL**

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

January 18, 1984

Abe & Alice Siegel  
90 Rainbow Rd.  
Massapequa Park, NY 11762

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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  
David Siegel  
82 Scudders Lane  
Roslyn Harbor, NY 11576  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition  
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ABE SIEGEL  
for Redetermination of a Deficiency or for  
Refund of Personal Income Tax under Article 22  
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DECISION

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In the Matter of the Petition  
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ALICE SIEGEL  
for Redetermination of a Deficiency or for  
Refund of Personal Income Tax under Article 22  
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Petitioners, Abe Siegel and Alice Siegel, 90 Rainbow Road, Massapequa Park, New York, 11762, filed petitions for redetermination of deficiencies or for refunds of personal income tax under Article 22 of the Tax Law for the years 1972 and 1973 (File Nos. 28336 and 28337).

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ISSUES

I. Whether petitioner Abe Siegel 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 Star Loose Leaf Company, Inc.

II. Whether petitioner Alice Siegel 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 Star Loose Leaf Company, Inc.

FINDINGS OF FACT

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3. During the periods at issue, petitioner Abe Siegel was president of Star. As such, he was responsible for managing and controlling its business

affairs and operations. All employer's returns of personal income tax withheld which were filed by Star during the periods at issue were signed by Abe Siegel.

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b) That petitioner was denied "due process of the law" and was prejudiced since more than seven (7) years have elapsed between the filing of his petition and the granting of a pre-hearing conference, his petition was not acknowledged, and due to ill health, he was unable to personally appear at the hearing.

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6. Petitioner Alice Siegel was the titular vice-president and secretary of Star. Her only duties consisted of routine clerical work, such as filing. She was not involved in the management of Star. Furthermore, she relinquished her officer titles on June 22, 1971, which was prior to the periods at issue herein.

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Siegel claims that the defenses used by Abe Siegel are equally applicable to her (see Finding of Fact "4", supra).

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A. That the Audit Division is not required to attempt to collect unpaid withholding taxes from a corporation, or from its trustee in bankruptcy, before imposing on and collecting from responsible officers the penalty imposed by section 685(g) of the Tax Law. Allan I. Jacobson, State Tax Commission, May 21, 1982.

B. That petitioners were neither prejudiced nor denied due process of the law. The record clearly shows that their petitions were acknowledged and that the delay in moving forward was caused by their failure to notify the Income Tax Bureau on completion of the bankruptcy proceedings.

C. That petitioner Abe Siegel was a person who willfully failed to collect, truthfully account for and pay over the New York State withholding

taxes of Star for the periods at issue herein; therefore, he is liable for the penalty imposed pursuant to section 685(g) of the Tax Law.

D. That the petition of Abe Siegel is denied and the Notice of Deficiency issued against him on December 28, 1973 is hereby sustained.

E. That petitioner Alice Siegel was not a person who willfully failed to collect, truthfully account for and pay over the New York State withholding taxes of Star for the periods at issue herein.

F. That the petition of Alice Siegel is granted and the Notice of Deficiency issued against her on December 28, 1973 is hereby cancelled.

DATED: Albany, New York

STATE TAX COMMISSION

JAN 18 1984

Rodrick W. Allen  
PRESIDENT

Francis R. Koenig  
COMMISSIONER

Michael J. O'Connell  
COMMISSIONER