

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :

of

Paul Stambolis :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or for :  
Refund of New York State Personal Income Tax :  
under Article 22 of the Tax Law and New York :  
City Personal Income Tax under Chapter 46, :  
Title T of the Administrative Code of the City :  
of New York for the Periods August 16, 1978 :  
through December 31, 1978 and January 1, 1979 :  
through December 31, 1979.

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State of New York :

ss.:

County of Albany :

Connie A. Ward, being duly sworn, deposes and says that she is an employee of the State Tax Commission, that she is over 18 years of age, and that on the 14th day of August, 1987, she served the within notice of decision by certified mail upon Paul Stambolis the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

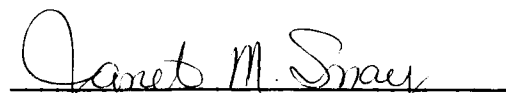
Paul Stambolis  
60 West 57th Street  
New York, NY 10019

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  
14th day of August, 1987.



  
Authorized to administer oaths  
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

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State of New York :

ss.:

County of Albany :

Connie A. Ward, being duly sworn, deposes and says that she is an employee of the State Tax Commission, that she is over 18 years of age, and that on the 14th day of August, 1987, he served the within notice of decision by certified mail upon Charles Kirkiles, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Charles Kirkiles  
Kirkiles & Kotiadis, P.C.  
29 Broadway  
New York, NY 10006

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  
14th day of August, 1987.

Connie A. Ward

James M. Spray  
Authorized to administer oaths  
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition  
of  
Georgia Sambazis

:

:

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or for :  
Refund of New York State Personal Income Tax :  
under Article 22 of the Tax Law and New York :  
City Personal Income Tax under Chapter 46, :  
Title T of the Administrative Code of the City :  
of New York for the Periods August 16, 1978 :  
through December 31, 1978 and January 1, 1979 :  
through December 31, 1979.

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State of New York :

ss.:

County of Albany :

Connie A. Ward, being duly sworn, deposes and says that she is an employee of the State Tax Commission, that she is over 18 years of age, and that on the 14th day of August, 1987, she served the within notice of decision by certified mail upon Georgia Sambazis the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Georgia Sambazis  
c/o Kirkiles & Kotiadis, P.C.  
29 Broadway  
New York, NY 10006

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  
14th day of August, 1987.

Connie A. Ward

Janet M. Snay  
Authorized to administer oaths  
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition  
of

Georgia Sambazis

:

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AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or for :  
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Charles Kirkiles  
Kirkiles & Kotiadis, P.C.  
29 Broadway  
New York, NY 10006

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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  
14th day of August, 1987.

Connie A. Ward

Janet M. Snay

Authorized to administer oaths  
pursuant to Tax Law section 174

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

August 14, 1987

Paul Stambolis  
60 West 57th Street  
New York, NY 10019

Dear Mr. Stambolis:

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 & 1312 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  
Audit Evaluation Bureau  
Assessment Review Unit  
Building #9, State Campus  
Albany, New York 12227  
Phone # (518) 453-4301

Very truly yours,

STATE TAX COMMISSION

cc: Taxing Bureau's Representative

Petitioner's Representative:  
Charles Kirkiles  
Kirkiles & Kotiadis, P.C.  
29 Broadway  
New York, NY 10006

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

August 14, 1987

Georgia Sambazis  
c/o Kirkiles & Kotiadis, P.C.  
29 Broadway  
New York, NY 10006

Dear Ms. Sambazis:

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 & 1312 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 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  
Audit Evaluation Bureau  
Assessment Review Unit  
Building #9, State Campus  
Albany, New York 12227  
Phone # (518) 453-4301

Very truly yours,

STATE TAX COMMISSION

cc: Taxing Bureau's Representative

Petitioner's Representative:  
Charles Kirkiles  
Kirkiles & Kotiadis, P.C.  
29 Broadway  
New York, NY 10006

## STATE TAX COMMISSION

## DECISION

Petitioner, Georgia Sambazis, c/o Kirkiles & Kotiadis, P.C., 29 Broadway, New York, New York 10006, filed a petition for redetermination of a deficiency or for refund of New York State personal income tax under Article 22 of the Tax

Law and New York City personal income tax under Chapter 46, Title T of the Administrative Code of the City of New York for the periods August 16, 1978 through December 31, 1978 and January 1, 1979 through December 31, 1979 (File No. 62940).

A consolidated hearing was held before Frank A. Landers, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on February 23, 1987 at 1:15 P.M. Petitioners appeared by Kirkiles & Kotiadis, P.C. (Charles Kirkiles, P.A.). The Audit Division appeared by John P. Dugan, Esq. (Mark F. Volk, Esq., of counsel).

#### ISSUE

Whether the deficiencies asserted against petitioners by the Audit Division for the period at issue have, in fact, been paid by Plaka Enterprises, Inc.

#### FINDINGS OF FACT

1. On April 29, 1985, the Audit Division issued a Notice of Deficiency, along with a Statement of Deficiency, asserting a penalty pursuant to section 685(g) of the Tax Law against petitioner Paul Stambolis as a person required to collect, truthfully account for and pay over withholding taxes of Plaka Enterprises, Inc. in the amount of \$10,435.05 for the periods August 16, 1978 through December 31, 1978 (\$5,141.95) and January 1, 1979 through December 31, 1979 (\$5,293.10). On the same date, a similar notice was issued against petitioner Georgia Sambazis in the same amount and for the same period.

2. On July 2, 1985, each of the petitioners herein timely filed a petition for a hearing to review the Notice of Deficiency. Petitioners claim that the New York State and New York City withholding taxes at issue were paid by Plaka Enterprises, Inc. from the proceeds of the sale of business assets of said corporation which occurred on August 6, 1979 and the collection of promissory



notes from said sale as they became due and payable. Petitioners maintain that said payments were not properly credited to their account by the Department of Taxation and Finance. Lastly, petitioners complained that prior to receipt of the abovementioned notices of deficiency, they were never advised that taxes might be due.

3. At the hearing, petitioners admitted their liability and, further, indicated that the sole reason for protesting the notices was to prove that the taxes were paid. Petitioners indicated that the records have been lost and they have not, otherwise, been able to find proof of payment.

#### CONCLUSIONS OF LAW

A. That the personal income tax imposed by Chapter 46, Title T of the Administrative Code of the City of New York is by its own terms tied into and contains essentially the same provisions as Article 22 of the Tax Law. Therefore, in addressing the issues presented herein, unless otherwise specified all references to particular sections of Article 22 shall be deemed references (though uncited) to the corresponding sections of Chapter 46, Title T.

B. That where a person is required to collect, truthfully account for and pay over withholding tax and willfully fails to collect and pay over such tax, section 685(g) of the Tax Law imposes on such person "a penalty equal to the total amount of tax evaded, or not collected, or not accounted for and paid over."


C. That petitioners have failed to sustain the burden of proof required to show that the taxes at issue have been paid.

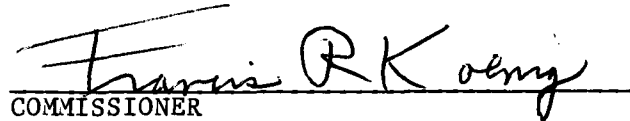
D. That the petitions of Paul Stambolis and Georgia Sambazis are denied and the notices of deficiency dated April 29, 1985 are sustained.


DATED: Albany, New York

STATE TAX COMMISSION

AUG 14 1987.

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER