

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
ERNEST H. WIEMER and JOHANNA WIEMER

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Personal Income :  
Taxes under Article (X) 22 of the :  
Tax Law for the Year (X) OF PERIOD (X) :  
1969

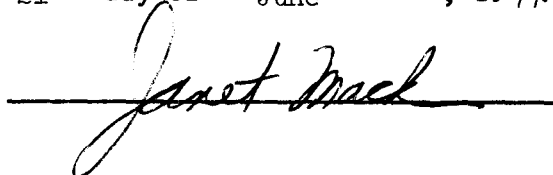
State of New York  
County of Albany

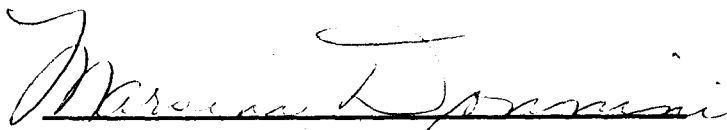
Marsina Donnini, being duly sworn, deposes and says that  
she is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 21 day of June, 19 77, she served the within  
Notice of Decision by (certified) mail upon Ernest H. Wiemer and  
Johanna Wiemer ~~(representative of)~~ the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Mr. & Mrs. Ernest H. Wiemer  
724 E. Capitol Boulevard  
Salt Lake City, Utah 84103  
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)~~  
~~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

21 day of June, 19 77.





STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

ERNEST H. WIEMER and JOHANNA WIEMER

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Personal Income :  
Taxes under Article (s) 22 of the :  
Tax Law for the Year (s) or Period (s) :  
~~XXXXXXXXXXXX~~  
1969

State of New York  
County of Albany

Marsina Donnini, being duly sworn, deposes and says that  
she is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 21 day of June, 1977, she served the within  
Notice of Decision by (certified) mail upon Albert A. Combar, Esq.

(representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Albert A. Gombar, Esq.  
36 Willow Street  
Floral Park, New York 11001

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

21 day of June, 1977

Marsina Donnini

Janet Mack



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

TAX APPEALS BUREAU

STATE CAMPUS  
ALBANY, N.Y. 12227

June 21, 1977

STATE TAX COMMISSION

ADDRESS YOUR REPLY TO

TELEPHONE: (518) 457-1723

Mr. & Mrs. Ernest H. Wiemer  
724 E. Capitol Boulevard  
Salt Lake City, Utah 84103

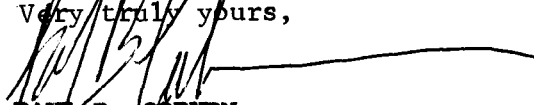
Dear Mr. & Mrs. Wiemer

Please take notice of the **Decision**  
of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to  
Section(X) 690 of the Tax Law, any  
proceeding in court to review an adverse deci-  
sion must be commenced within **4 months**  
from the date of this notice.

Inquiries concerning the computation of tax  
due or refund allowed in accordance with this  
decision or concerning any other matter relative  
hereto may be addressed to the undersigned. They  
will be referred to the proper party for reply.

Very truly yours,

  
PAUL B. COBURN  
Supervising Tax  
Hearing Officer

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
	:	
ERNEST H. WIEMER and JOHANNA WIEMER	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Year	:	
1969.	:	

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Petitioners, Ernest H. Wiemer and Johanna Wiemer,  
724 E. Capitol Boulevard, Salt Lake City, Utah 84103,  
filed a petition for redetermination of a deficiency or  
for refund of personal income tax under Article 22 of the  
Tax Law for the year 1969. (File No. 00464).

A formal hearing was held before Edward L. Johnson,  
Hearing Officer, at the offices of the State Tax Commission,  
Two World Trade Center, New York, New York, on June 10, 1976  
at 1:15 P.M. Petitioners appeared by Albert A. Gombar, Esq.  
The Income Tax Bureau appeared by Peter Crotty, Esq. (Irwin A.  
Levy, Esq., of counsel).

#### ISSUES

I. Whether petitioners, Ernest H. Wiemer and Johanna  
Wiemer, have complied with the requirements of section 654(c)(4)  
of the Tax Law which provides that accruals under section 654(c)

shall not be required if the taxpayers file a surety bond or other security acceptable to the State Tax Commission.

II. Whether section 654(c)(4) of the Tax Law is constitutional as applied to the petitioners, Ernest H. Wiemer and Johanna Wiemer, for the year 1969.

III. Whether taxes paid in prior years by petitioners, Ernest H. Wiemer and Johanna Wiemer, were not owed and were, therefore, incorrectly paid; and if so, whether those taxes could be accelerated and applied to the assessment against the petitioners for the year 1969.

#### FINDINGS OF FACT

1. Petitioners, Ernest H. Wiemer and Johanna Wiemer, filed a New York State resident return for the year 1969. This return covered the period of January 1, 1969 to April 30, 1969. Total New York income for this period was listed by the petitioners as \$11,326.22.

2. Petitioners, Ernest H. Wiemer and Johanna Wiemer, filed a New York State nonresident income tax return for the year 1969, covering the period April 17, 1969 to December 31, 1969. Total Federal income was listed by them as \$18,564.94, while total New York State income was listed as \$27,432.15.

3. On April 10, 1972, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, Ernest H. Wiemer and Johanna Wiemer, imposing additional personal income tax for the year 1969 in the amount of \$2,670.57, plus interest of \$329.83, upon the grounds that the petitioners failed to take an election pursuant to section 654(c)(4) of the Tax Law. Accordingly, a Notice of Deficiency was issued totalling \$3,000.40.

4. The petitioners, Ernest H. Wiemer and Johanna Wiemer, changed residency from New York to New Jersey in April of 1969. At this time, they were receiving payments on a Purchase Money Mortgage from a sale of property in New York State.

5. Prior to their change of residence, the petitioners, Ernest H. Wiemer and Johanna Wiemer, elected to report the income from the installment payments stated in Finding of Fact "4", supra, on an installment basis.

6. The petitioners, Ernest H. Wiemer and Johanna Wiemer, failed to accrue their income for the portion of 1969 preceding their change of residence status, per the requirements of section 654(c)(1) of the Tax Law and 20 NYCRR 148.10.

7. The petitioners, Ernest H. Wiemer and Johanna Wiemer, at the time they filed their return for the period prior to

the change of residence failed to post a surety bond or other security acceptable to the State Tax Commission as an election under section 654(c)(4) of the Tax Law and 20 NYCRR 148.11, so as to avoid the necessity of meeting the requirements mentioned in Finding of Fact "6", supra.

8. The petitioners, Ernest H. Wiemer and Johanna Wiemer, offered no documentary or other substantial evidence to show that they incorrectly paid taxes in prior tax years, which could now be accelerated and applied to the deficiency in issue.

#### CONCLUSIONS OF LAW

A. That the constitutionality of the laws of the State of New York is presumed at the administrative level of the New York State Tax Commission. There is no jurisdiction at the administrative level to decide the constitutionality of a law. Therefore, it must be presumed that section 654(c)(4) of the Tax Law is constitutional.

B. That within the meaning and intent of section 654(c)(4) of the Tax Law and 20 NYCRR 148.11, there is no exception to the necessity of meeting the requirements of said statute and regulation in order to avoid the accruals required by section 654(c)(1) of the Tax Law and 20 NYCRR 148.10. Petitioners, Ernest H. Wiemer and Johanna Wiemer, did not meet said require-

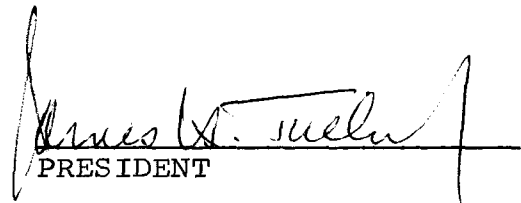
ments, since they failed to file a surety bond or other security acceptable to the State Tax Commission at the time they filed their return for the period prior to the change of residence.

C. That, since the petitioners, Ernest H. Wiemer and Johanna Wiemer, offered no documentary or other substantial evidence of incorrectly paid taxes in tax years prior to 1969, the acceleration and application of those taxes to the taxes in issue need not be decided.

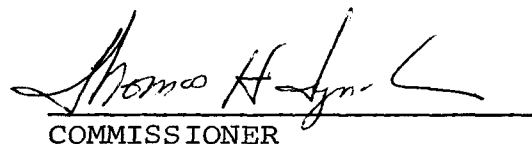
D. That the petition of Ernest H. Wiemer and Johanna Wiemer is denied and the Notice of Deficiency issued April 10, 1972, is sustained.

DATED: Albany, New York  
June 21, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER