

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Moe Leinwand :

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 Year 1968 - 1971. :

State of New York
County of Albany

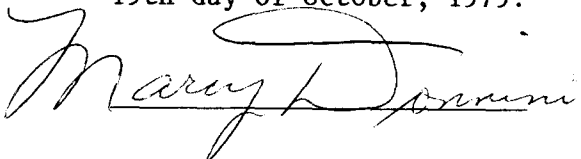
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 19th day of October, 1979, he served the within notice of Decision by certified mail upon Irving M. Maron the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

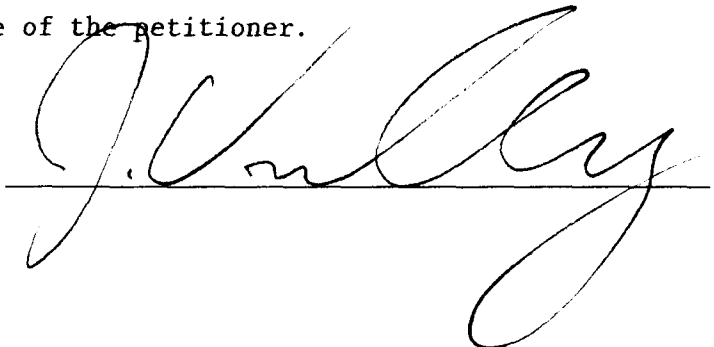
Mr. Irving M. Maron
Leinwand, Maron, Hendler & Krause
10 E. 40th St.
New York, NY 10016

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
19th day of October, 1979.


Mary D. Dorrani


J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

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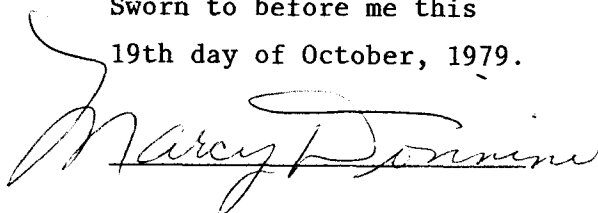
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 19th day of October, 1979, he served the within notice of Decision by certified mail upon Moe Leinwand, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

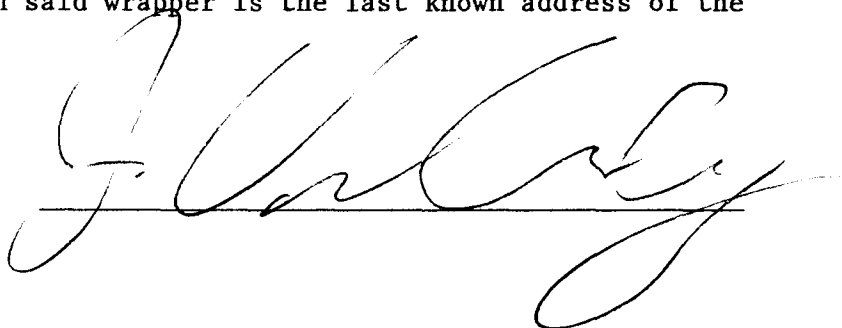
Moe Leinwand
53 Green Haven Rd.
Rye, NY

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
19th day of October, 1979.


Nancy Dornine



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

October 19, 1979

Moe Leinwand
53 Green Haven Rd.
Rye, NY

Dear Mr. Leinwand:

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
Irving M. Maron
Leinwand, Maron, Hendler & Krause
10 E. 40th St.
New York, NY 10016
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
MOE LEINWAND	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Years	:	
1968, 1969, 1970 and 1971.	:	
	:	

Petitioner, Moe Leinwand, 53 Greenhaven Road, Rye, 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 1968, 1969, 1970 and 1971 (File No. 21343).

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 November 18, 1976 at 11:15 A.M. and concluded on May 17, 1977 at 1:50 P.M. Petitioner appeared by Leinwand, Maron, Hendler and Kraus, Esqs. (Irving Maron, Esq., of counsel). The Income Tax Bureau appeared by Peter Crotty, Esq. (Frank Levitt, Esq., of counsel).

ISSUE

Whether petitioner is personally liable under the Tax Law for a penalty equal to the unpaid New York State income taxes withheld by American Offset Corporation for 1968, 1969, 1970 and 1971.

FINDINGS OF FACT

1. On December 27, 1971, the Income Tax Bureau issued a Notice of Deficiency against petitioner, Moe Leinwand, for New York State income taxes amounting to \$122,684.71. Attached thereto was a Statement of Deficiency for income tax withheld by American Offset Corporation, 45-31 Court Square, Long Island City, New York 11101, detailing the deficiency as follows:

<u>Withholding Tax Period</u>	<u>Amount</u>
2/1 - 12/31/68	\$31,901.56
1/1 - 12/31/69	48,696.59
1/1 - 9/30/70	26,576.56
10/1 - 12/31/70	12,000.00
1/1 - 1/27/71	<u>3,510.00</u>
TOTAL AMOUNT	<u>\$122,684.71</u>

The Statement of Deficiency assessed petitioner, Moe Leinwand, \$122,684.71 (as a penalty equal to the unpaid tax under section 685(g) of the Tax Law), as a person who willfully failed to collect, truthfully account for, and pay over the income tax imposed by the Tax Law.

2. In September of 1964, petitioner, Moe Leinwand, joined with Herbert Moscow, Oscar Scheiff and two others in purchasing stock of, and making a loan to, the newly organized SMC Printing Corp. in order to acquire all the outstanding shares of American Offset Corporation (hereinafter "American"). Petitioner, Moe Leinwand, became a director and vice-president of SMC. It is not clear what corporate office he held at American, the wholly-owned subsidiary of SMC.

3. On January 13, 1969, petitioner, Moe Leinwand, sold all of his stock in SMC to that corporation, as well as to Herbert Moscow, Harold E. Becker and Oscar Scheiff. On the same day, both SMC and American executed general releases in favor of petitioner, Moe Leinwand. He in turn executed releases to both corporations and resigned as officer and director of both.

4. During the period when petitioner, Moe Leinwand, was an officer of American, he did not sign checks or tax returns. After January 13, 1969, petitioner, Moe Leinwand, had no connection with American. Throughout the tax period for 1968, 1969, 1970 and 1971, petitioner, Moe Leinwand, did not participate in the fiscal operation of American.

5. The only evidence that income withholding tax returns had been filed and the reported tax unpaid by American during the period in question was the Notice of Deficiency and Statement of Deficiency. Petitioner, Moe Leinwand, denied any knowledge of American's tax matters.

CONCLUSIONS OF LAW

A. That petitioner was not a person under a duty to collect, truthfully account for, and pay over the tax imposed by the Tax Law, nor was he a person who willfully failed to perform the acts required of him under said Law. Section 685(g)(i).

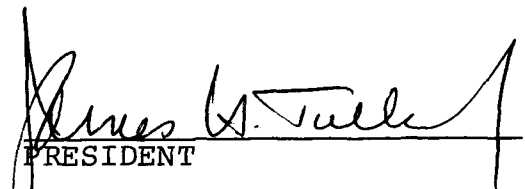
B. That petitioner was not an officer of American Offset Corporation after January 13, 1969 and could not be responsible for violation of the Tax Law subsequent to the due date for filing the return for the first quarter of 1969.

C. That the petition of Moe Leinwand for redetermination of the deficiency dated December 27, 1971 in the amount of \$122,684.71 is granted and the Notice of Deficiency is cancelled.

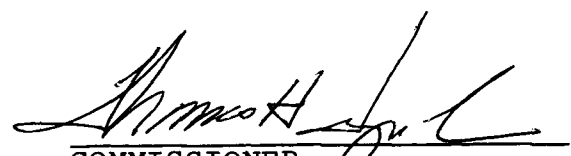
DATED: Albany, New York

STATE TAX COMMISSION

OCT 19 1979


PRESIDENT


COMMISSIONER


COMMISSIONER