

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :

of

Harry & Eva Leitner :

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 1973. :

State of New York

County of Albany

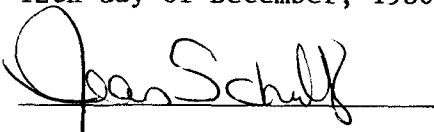
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 12th day of December, 1980, he served the within notice of Decision by certified mail upon Harry & Eva Leitner, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

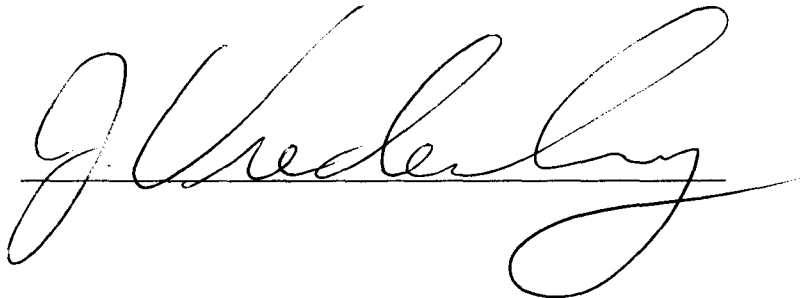
Harry & Eva Leitner  
5 Dolores Pl.  
Plainview, NY 11803

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  
12th day of December, 1980.

  
\_\_\_\_\_  
Jean Schull

  
\_\_\_\_\_  
Jay Vredenburg

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
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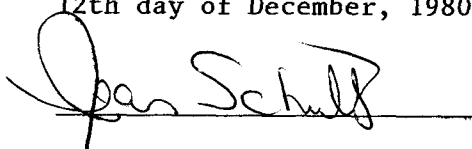
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 12th day of December, 1980, he served the within notice of Decision by certified mail upon Aaron S. Rogel the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

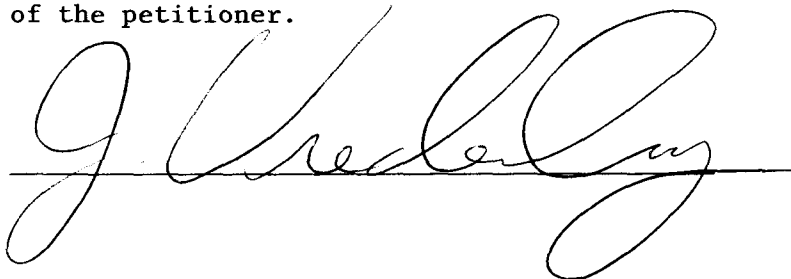
Mr. Aaron S. Rogel  
Lennox, Lempal, Rogal & Nasser  
109 New Dorp Plaza  
Staten Island, NY 10306

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  
12th day of December, 1980.

  
Jan Schult

  
Jay Vredenburg

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

December 12, 1980

Harry & Eva Leitner  
5 Dolores Pl.  
Plainview, NY 11803

Dear Mr. & Mrs. Leitner:

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  
Aaron S. Rogel  
Lennox, Lempal, Rogal & Nasser  
109 New Dorp Plaza  
Staten Island, NY 10306  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
HARRY LEITNER and EVA LEITNER : DECISION  
for Redetermination of a Deficiency or :  
for Refund of Personal Income Tax under :  
Article 22 of the Tax Law for the Year :  
1973.

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Petitioners, Harry Leitner and Eva Leitner, 5 Dolores Place, Plainview, New York 11803, 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 1973 (File No. 18038).

A small claims hearing was held before Samuel Levy, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 23, 1980 at 1:15 P.M. Petitioners appeared by Aaron S. Rogal, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Aliza Schwadron, Esq., of counsel).

ISSUE

Whether petitioners' New York State adjusted gross income was understated for subject year based on their reported Federal adjusted gross income.

FINDINGS OF FACT

1. Petitioners, Harry Leitner and Eva Leitner, filed a New York State Income Tax Resident Return for 1973. On said return, petitioners' total New York income differed from the adjusted gross income reported on their Federal income tax return by the amount of \$7,000.00.

2. On February 28, 1977, the Audit Division issued a Notice of Deficiency against petitioners imposing personal income tax of \$1,050.00, plus interest of \$226.32, for a total of \$1,276.32. The Notice was issued on the ground that the starting point for computing total New York income is Federal adjusted gross income which was \$7,000.00 more than that reported on their New York State personal income tax return.

3. Petitioner Harry Leitner was a fifty (50) percent shareholder of Duo Textiles, Inc. ("Corporation"), a California based corporation.

4. Petitioner Harry Leitner contended that the corporate dividend of \$7,000.00 reported on his Federal income tax return for subject year was reported in error. He also contended that the dividend income was attributable to and should have been reported on the Federal income tax return of the other fifty (50) percent shareholder of the corporation, who was a nonresident of New York State.

Petitioner further argued that his failure to amend his Federal income tax return, although the alleged error was discovered within the statutory period, was based on his concern that filing an amended Federal income tax return would "trigger" a Federal audit of his personal income tax return and an audit of the corporation's Federal return.

#### CONCLUSIONS OF LAW

A. That the New York adjusted gross income of petitioners, Harry Leitner and Eva Leitner, was understated for 1973. That pursuant to section 612(a) of the Tax Law, the New York State adjusted gross income of a resident individual means his Federal adjusted gross income as defined in the laws of the United States for the taxable year with certain modifications, which modifications are not applicable in the instant matter.

B. That petitioners have failed to meet the burden of proof imposed by section 689(e) of the Tax Law in establishing that the reported Federal adjusted gross income was incorrect.

C. That the petition of Harry Leitner and Eva Leitner is denied, and the Notice of Deficiency dated February 28, 1977 is sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York

DEC 12 1980

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER