

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Rosemarie Ragonesi :  
and James Friscia : 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 20th day of June, 1980, he served the within notice of Decision by certified mail upon Rosemarie Ragonesi, and James Friscia, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Rosemarie Ragonesi  
and James Friscia  
1868 61st St.  
Brooklyn, NY 11204

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  
20th day of June, 1980.

Joanne Knapp

J. J. Vredenburg

STATE OF NEW YORK  
STATE TAX COMMISSION

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of  
Rosemarie Ragonesi :  
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of a Determination or a Refund of  
Personal Income Tax :  
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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 20th day of June, 1980, he served the within notice of Decision by certified mail upon David Goldstein 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. David Goldstein  
Goldstein, Kostrinsky & Liberman  
132 Nassau St.  
New York, NY 10038

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  
20th day of June, 1980.

*Joanne Knapp*

*J. J. Vredenburg*

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

June 20, 1980

Rosemarie Ragonesi  
and James Friscia  
1868 61st St.  
Brooklyn, NY 11204

Dear Ms. Ragonesi & Mr. Friscia:

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  
David Goldstein  
Goldstein, Kostrinsky & Liberman  
132 Nassau St.  
New York, NY 10038  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
	:	
ROSEMARIE RAGONESI AND JAMES FRISCIA	:	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, Rosemarie Ragonesi and James Friscia, 1868 61st Street, Brooklyn, New York 11204, 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. 14616).

A formal hearing was held before Archibald F. Robertson, Jr., Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 19, 1978 at 2:45 P.M. Petitioners appeared by Goldstein, Kostrinsky & Liberman, Esqs. (David Goldstein, Esq., of counsel). The Audit Division appeared by Peter Crotty, Esq. (William Fox, Esq., of counsel).

ISSUES

I. Whether petitioner James Friscia, as owner, de facto president and chief managing officer of a clothing corporation (in which his wife served as designated president for part of 1973), was a person required to collect, account for, and pay over withholding taxes for 1973 to the State of New York, within the meaning of section 685(g) of the Tax Law.

II. Whether petitioner James Friscia willfully failed to collect, account for and pay over taxes within the meaning of section 685(g) of the Tax Law; said petitioner, therefore, being liable for personal income tax for 1973

under said section of the Tax Law.

III. Whether petitioner Rosemarie Ragonesi who, as the designated president of a corporation, signed corporate checks in blank (leaving the entire management of the corporation to its de facto president, her husband), was a person required to collect, account for and pay over withholding taxes for 1973 to the State of New York, within the meaning of section 685(g) of the Tax Law.

IV. Whether petitioner Rosemarie Ragonesi willfully failed to collect, account for and pay over taxes within the meaning of section 685(g) of the Tax Law; said petitioner, therefore, being liable for personal income taxes for 1973 under said section of the Tax Law.

#### FINDINGS OF FACT

1. On February 24, 1976, the Income Tax Bureau issued a Statement of Deficiency and a Notice of Deficiency to Rosemarie Ragonesi for the period January 1 to December 31, 1973 for \$3,900.50. On February 24, 1976, the Bureau also issued a Statement of Deficiency and a Notice of Deficiency to James Friscia for 1973 in the amount of \$3,900.50. The deficiencies were based on penalties equal to the unpaid withholding taxes due from B & L Clothing Corp.

2. Petitioner James Friscia (husband of petitioner Rosemarie Ragonesi), purchased the B & L Dress Company from his father-in-law in 1962. He operated the business as manager under the name B & L Clothing Corp. throughout 1973.

3. Petitioner Rosemarie Ragonesi was installed as president of B & L Clothing Corp. in 1962 and continued to fill that position until May, 1973. As president, petitioner Rosemarie Ragonesi signed whatever corporate documents were placed before her by her husband, petitioner James Friscia.

4. Petitioner Rosemarie Ragonesi signed blank checks for the corporation, half-a-book at a time, throughout the period of her presidency.

5. Petitioner Rosemarie Ragonesi performed the corporate activities outlined in Findings of Fact "3" and "4" from her home. She maintained no office at B & L Clothing Corp. during 1973, nor did she actually oversee any aspect of the business.

6. Petitioner James Friscia was the manager and de facto operating officer of B & L Clothing Corporation from the time he purchased the corporation in 1962 to the time it ceased operating in 1975.

7. Petitioner James Friscia was employed by B & L Clothing Corp. as a dress cutter throughout the period involved herein. He was a union member and worked in the factory until he became president of B & L Clothing Corp. in May, 1973. He continued as president until the B & L Clothing Corp. ceased operations in 1975.

8. Petitioner James Friscia conducted negotiations with manufacturers, suppliers and contractors throughout 1973 on behalf of B & L Clothing Corp. Throughout these negotiations, petitioner represented himself to be an executive officer of B & L Clothing Corp.

9. Petitioner James Friscia had the various payrolls of B & L Clothing Corp. prepared under his direction.

10. Petitioners transmitted no withholding tax to New York State for 1973. Petitioner Rosemarie Ragonesi's name (R. Ragonesi) appears on Form IT-2103 for 1973, which shows that the sum of \$3,900.50 was withheld. This document was prepared by the bookkeeper of the corporation who had implied authority from petitioner James Friscia (who was running the corporation) to fill in the name of the president of the corporation.

#### CONCLUSIONS OF LAW

A. That petitioner James Friscia as the owner, the de facto president and chief managing officer of B & L Clothing Corporation, was a person (within

the meaning of section 685(g) of the Tax Law) required to collect, account for and pay over withholding taxes to New York State.

B. That petitioner James Friscia willfully failed (within the meaning of section 685(g) of the Tax Law) to collect, account for and pay over withholding taxes for 1973 to New York State; therefore, he is liable to a penalty for 1973 under section 685(g) of the Tax Law.

C. That petitioner Rosemarie Ragonesi who, as the designated president of a corporation, signed corporate checks in blank, leaving the entire management of the corporation to her husband, was a person (within the meaning of section 685(g) of the Tax Law) required to collect, account for and pay over withholding taxes to New York State for the period January 1 through April 30, 1973.

D. That petitioner Rosemarie Ragonesi, by willfully keeping herself ignorant of the corporation's fiscal and tax status, willfully failed (within the meaning of section 685(g) of the Tax Law) to collect, account for and pay over withholding taxes for the period January 1 through April 30, 1973; therefore, she is liable to a penalty for the period January 1 through April 30, 1973 under said section of the Tax Law and the Audit Division is directed to modify the Notice of Deficiency accordingly.

E. That the petition of Rosemarie Ragonesi is granted to the extent provided in Conclusion of Law "D" supra, but that it is in all other respects denied and the Notice of Deficiency as modified is sustained. That the petition of James Friscia is denied and the Notice of Deficiency is sustained.

DATED: Albany, New York

**JUN 20 1980**

STATE TAX COMMISSION

*James H. Tuohy*  
PRESIDENT

*Thomas H. ...*  
COMMISSIONER

*Francis R. Koenig*  
COMMISSIONER