

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

PEARL D. COFFEE

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(s) ~~XXXXXX~~  
1969, 1970 and 1972

State of New York  
County of

John Huhn, 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 24th day of April, 1978, she served the within  
Notice of Decision by (certified) mail upon Pearl D. Coffee

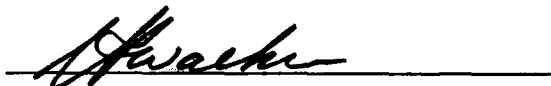
~~XXXXXXXXXXXXXXXXXXXX~~ the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Pearl D. Coffee  
48 Picadilly Road  
Great Neck, New York

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 ~~XXXXXXXXXXXXXXXXXXXX~~  
~~XXXXXX~~ petitioner herein and that the address set forth on said wrapper is the  
last known address of the ~~XXXXXXXXXXXXXXXXXXXX~~ petitioner.

Sworn to before me this

24th day of April, 1978.







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

**April 24, 1978**

JAMES H. TULLY JR., PRESIDENT  
MILTON KOERNER  
THOMAS H. LYNCH

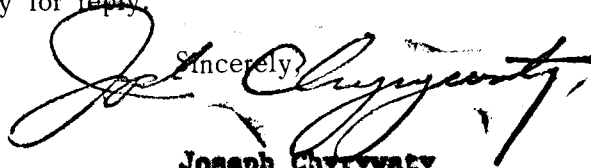
**Pearl D. Coffee  
48 Picadilly Road  
Great Neck, NY**

**Dear Ms. Coffee:**

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 the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,  
  
**Joseph Chyrywaty  
Hearing Examiner**

~~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 :

PEARL D. COFFEE :

for Redetermination of a Deficiency or for:  
Refund of Personal Income Tax under  
Article 22 of the Tax Law for the Years :  
1969, 1970 and 1972.

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DECISION

Petitioner, Pearl D. Coffee, 48 Picadilly Road, Great Neck, 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 1969, 1970 and 1972 (File No. 13986).

A small claims hearing was held before Harry Huebsch, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 28, 1977 at 2:45 P.M. Petitioner appeared pro se and by Arthur Queler, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (Irwin Levy, Esq., of counsel).

ISSUE

Whether petitioner was liable for the penalty imposed against her pursuant to section 685(g) of the Tax Law, with respect to unpaid New York State withholding taxes due from Educational Guidance Center for Mentally Retarded, Inc.

FINDINGS OF FACT

1. Education Guidance Center for Mentally Retarded, Inc. (hereinafter referred to as "Educational Guidance"), failed to pay over to the Income Tax Bureau, New York State personal income taxes withheld from the wages of its employees for the years 1969, 1970 and 1972.

2. On December 22, 1975, the Income Tax Bureau issued a Statement of Deficiency against petitioner, Pearl D. Coffee, equal to the amount of New York State withholding taxes due from Educational Guidance for the years 1969, 1970 and 1972, on the grounds that she was a person required to collect, truthfully account for and pay over said taxes and that she willfully failed to do so. It accordingly issued a Notice of Deficiency against her in the amount of \$424.60 for 1969, \$67.49 for 1970 and \$128.60 for 1972, for a total due of \$620.69.

3. In 1967 petitioner was hired on a full-time basis as a vocational and educational guidance counsellor for mentally retarded adults by Educational Guidance. She had no financial interest in said organization, nor did she have decision-making authority.

4. In May of 1970, petitioner was promoted to the position of executive director by the Board of Directors of Educational Guidance, with an increase in her salary. The Board of Directors met once a month or every other month, while petitioner ran the day-to-day operations of the organization. Petitioner had the authority to co-sign checks in payment of creditors and to make decisions jointly with the president or treasurer as to which creditors should be given priority in payment. She knew there were delinquent taxes and made an effort to "catch up." Petitioner sat in on Board of Directors' meetings. At one such meeting, she presented financial information as to the necessity to reduce the size of the staff because of a lack of working capital. Consequently, some of the employees of Educational Guidance were laid off.

5. Petitioner signed form IT-2103, reconciliation of personal income tax withheld from employees for the year 1970, on February 17, 1971.

CONCLUSIONS OF LAW

A. That petitioner, Pearl D. Coffee, was a person required to collect, truthfully account for and pay over New York State withholding taxes due from Educational Guidance and that she willfully failed or caused Educational Guidance to willfully fail to collect, truthfully account for and pay over such taxes for the periods at issue, within the meaning and intent of subsections (g) and (n) of section 685 of the Tax Law. This remains so for the period prior to May of 1970 when she became Educational Guidance's executive director (during which period she would not technically have been required to "collect" the taxes), since she knew a) that such withholding taxes had not been paid and b) that she caused funds subsequently acquired to be used for the satisfaction of other corporate debts instead of for payment of the withholding taxes due. Slodov v. United States, 552 F. 2d 159 (6th Cir. 1977). See also: Kaufman v. Scanlon 245 F. Supp. 352 (D.C. N.Y. 1965). Accordingly, petitioner is subject to the penalties imposed under section 685(g) of the Tax Law.

B. That the petition of Pearl D. Coffee is denied and the Notice of Deficiency issued December 22, 1975 is sustained.

DATED: Albany, New York  
April 24, 1978

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER