

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

GERTRUDE PALEIAS

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) or Period(s)~~ 1971:

State of New York
County of Albany

John Huhn, 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 22nd day of March, 1978, ~~he~~ served the within
Notice of Decision by (certified) mail upon Gertrude Paleias

(~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed

as follows: Ms. Gertrude Paleias
300 East 34th Street
New York, New York 10016

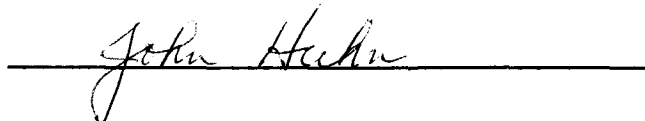
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

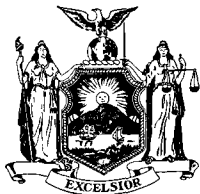
That deponent further says that the said addressee is the (~~representative~~
~~of the~~) petitioner herein and that the address set forth on said wrapper is the
last known address of the (~~representative of the~~) petitioner.

Sworn to before me this

22nd day of March, 1978.







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

March 22, 1978

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

**Ms. Gertrude Paleias
300 East 34th Street
New York, New York 10016**


Dear Ms. Paleias:

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 ~~(3)~~ **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 Chyrywat
Hearing Examiner**

cc: ~~XXXXXXXXXXXXXXXXXXXX~~
Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
of
GERTRUDE PALEIAS
for Redetermination of a Deficiency or
for Refund of Personal Income Tax under
Article 22 of the Tax Law for the Year
1971.

DECISION

Petitioner, Gertrude Paleias, 300 East 34th Street, New York,
New York 10016, filed a petition for redetermination of a defi-
ciency or for refund of personal income tax under Article 22 of
the Tax Law for the year 1971 (File No. 12741).

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 29, 1977 at 1:15 P.M.
Petitioner appeared pro se. The Income Tax Bureau appeared by
Peter Crotty, Esq. (Louis Senft, Esq., of counsel).

ISSUE

Whether petitioner was liable for the penalty imposed
pursuant to section 685(g) of the Tax Law with respect to unpaid
New York State withholding taxes due from Jerrax Imports, Inc.
for the year 1971.

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
GERTRUDE PALEIAS
for Redetermination of a Deficiency or
for Refund of Personal Income Tax under
Article 22 of the Tax Law for the Year
1971.

DECISION

Petitioner, Gertrude Paleias, 300 East 34th Street, New York, New York 10016, 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 1971 (File No. 12741).

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 29, 1977 at 1:15 P.M. Petitioner appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq. (Louis Senft, Esq., of counsel).

ISSUE

Whether petitioner was liable for the penalty imposed pursuant to section 685(g) of the Tax Law with respect to unpaid New York State withholding taxes due from Jerrax Imports, Inc. for the year 1971.

FINDINGS OF FACT

1. Jerrax Imports, Inc. failed to pay over to the Income Tax Bureau, New York State personal income taxes in the sum of \$282.93 which it withheld from its employees during the year 1971.

2. On January 27, 1975, the Income Tax Bureau issued a Statement of Deficiency against petitioner, Gertrude Paleias, for a penalty equal to the amount of New York State withholding taxes due from Jerrax Imports, Inc. for the year 1971. This was done 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. In accordance with the Statement of Deficiency, the Income Tax Bureau issued a Notice of Deficiency therefor.

3. Petitioner was hired as an assistant bookkeeper by Jerrax Imports, Inc. in late 1970 or early 1971. She was never an officer nor did she ever own stock of said corporation.

4. In 1971 Jerrax Imports, Inc. was in financial difficulty and began laying off personnel. As employees were terminated, their duties were given to the remaining skeleton staff. Petitioner was given the title of "controller" in November of 1971 and was therefore responsible for signing tax forms and co-signing checks. She received neither an increase in wages nor responsibilities beyond those of a bookkeeper.

5. Petitioner stated that it was her duty to co-sign checks because Jerrax Imports, Inc.'s creditor bank required the signature of someone other than an officer.

6. Jerrax Imports, Inc. held meetings periodically to determine which creditors should be paid. At these meetings, petitioner brought in a list of accounts payable. The chairman of the Board of Directors checked off the names of creditors to be submitted to the creditor bank for approval of payment. Petitioner did not determine who should be paid.

7. Petitioner's duties did not include the preparation of payrolls, nor did she have access to payroll records. She signed whatever forms were presented to her for her signature and was not aware that a portion of the New York State tax withheld by Jerrax had not been paid.

CONCLUSIONS OF LAW

A. That petitioner, Gertrude Paleias, was not a person under a duty to perform the task of collecting and paying over the withholding taxes due from Jerrax Imports, Inc., within the meaning and intent of section 685(n) of the Tax Law.

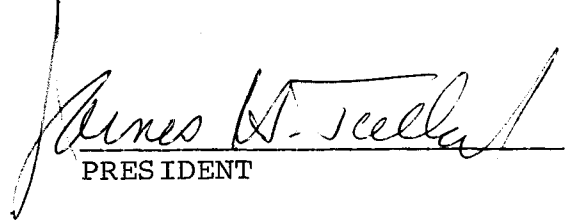
B. That since petitioner, Gertrude Paleias, did not willfully fail or cause Jerrax Imports, Inc. to willfully fail to collect, truthfully account for and pay over New York State

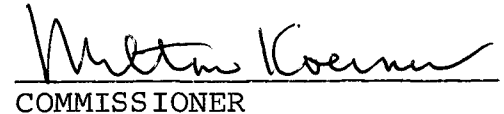
withholding taxes due for the year 1971, a penalty equal to the total amount of unpaid withholding taxes was improperly assessed against her in accordance with the meaning and intent of section 685(g) of the Tax Law.

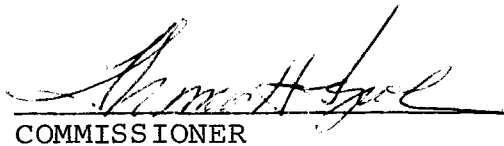
C. That the petition of Gertrude Paleias is granted and the Notice of Deficiency issued January 27, 1975 in the amount of \$282.93 is cancelled.

DATED: Albany, New York
March 22, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER