

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

REGINA SAMUEL

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)~~
1973, 1974 and 1975.

State of New York
County of Albany

John Huhn, being duly sworn, deposes and says that
~~she~~ he is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 6th day of October, 1978, ~~she~~ he served the within
Notice of Decision by (certified) mail upon Regina Samuel

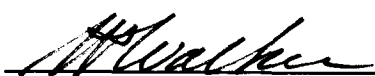
(~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed

as follows: Ms. Regina Samuel
6 Herrick Drive
Lawrence, New York 11559

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~~
~~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
6th day of October, 1978





STATE OF NEW YORK
STATE TAX COMMISSION

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REGINA SAMUEL

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For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article(*) 22 of the :
Tax Law for the Year(s) ~~xxx~~ ~~xxxx~~ ~~xxxx~~ :
1973, 1974 and 1975.

State of New York
County of Albany

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 6th day of October, 1978, ~~she~~ served the within
Notice of Decision by (certified) mail upon Howard W. Segal

(representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed

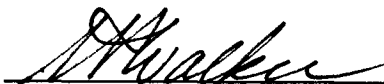
as follows:
Howard W. Segal, Esq.
Altes & Segal
225 Broadway
New York, New York 10007

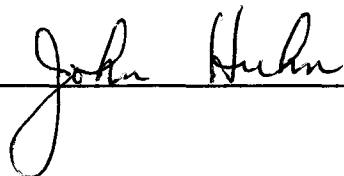
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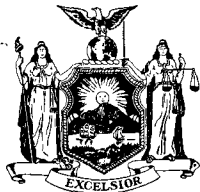
That deponent further says that the said addressee is the (representative
of the) petitioner herein and that the address set forth on said wrapper is the
last known address of the (representative of the) petitioner.

Sworn to before me this

6th day of October, 1978.







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

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

October 6, 1978

**Ms. Regina Samuel
6 Herrick Drive
Lawrence, New York 11559**

Dear Ms. Samuel:

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 ~~(x)~~ **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,

**Michael Alexander
Supervising Tax
Hearing Officer**

cc: Petitioner's Representative
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

REGINA SAMUEL

DECISION

for Redetermination of a Deficiency or
for Refund of Personal Income Tax under
Article 22 of the Tax Law for the Years
1973, 1974 and 1975.

Petitioner, Regina Samuel, 6 Herrick Drive, Lawrence,
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 1973, 1974 and 1975 (File Nos. 12769 and
15712).

A formal hearing was held before Frank A. Romano, Hearing
Officer, at the offices of the State Tax Commission, Two World
Trade Center, New York, New York, on March 23, 1977 at 9:15 A.M.
and continued at the same location on June 15, 1977 at 2:45 P.M.

The petitioner appeared by Altes & Segal, Esqs. (Howard W.
Segal, Esq., of counsel). The Income Tax Bureau appeared by
Peter Crotty, Esq. (William Fox, Esq., of counsel).

ISSUE

Whether petitioner was a person required to collect, truthfully account for and pay over the withholding taxes of the employees of Cosmopolitan Knitwear Processing Corp. and Cosmo Dye Works, Inc., within the meaning and intent of section 685(n) of the Tax Law for the years 1973, 1974 and 1975 and, if so required, whether said petitioner willfully failed to collect, truthfully account for and pay over the withholding taxes of said corporations within the meaning and intent of section 685(g) of the Tax Law.

FINDINGS OF FACT

1. Cosmopolitan Knitwear Processing Corp. (hereinafter "Cosmopolitan") failed to pay over to the New York State Income Tax Bureau personal income taxes withheld from its employees for the period December 1, 1973 through January 20, 1975 in the amount of \$5,627.21, computed as follows:

<u>WITHHOLDING TAX PERIOD</u>	<u>AMOUNT</u>
December 1 to December 31, 1973	\$ 355.25
April 1 to April 15, 1974	378.30
April 16 to April 30, 1974	358.35
May 1 to May 15, 1974	396.20
May 16 to May 31, 1974	603.38
June 1 to June 15, 1974	156.84

June 16 to June 30, 1974	434.71
July 1 to July 15, 1974	523.83
July 16 to July 31, 1974	292.67
September 1 to September 15, 1974	261.27
September 16 to September 30, 1974	244.71
October 1 to October 15, 1974	408.63
October 16 to October 31, 1974	226.25
November 1 to November 15, 1974	310.47
November 16 to November 30, 1974	97.09
December 1 to December 15, 1974	200.63
December 16 to December 31, 1974	244.84
January 1 to January 20, 1975	<u>133.78</u>
Total Due	\$5,627.21

2. Cosmo Dye Works, Inc. (hereinafter "Cosmo") failed to pay over to the New York State Income Tax Bureau personal income taxes withheld from its employees for the period June 16, 1974 through January 27, 1975 in the amount of \$4,553.20, computed as follows:

<u>WITHHOLDING TAX PERIOD</u>	<u>AMOUNT</u>
June 16 to June 30, 1974	\$ 604.35
July 1 to July 15, 1974	524.70
September 1 to September 15, 1974	361.43

September 16 to September 30, 1974	349.22
October 1 to October 15, 1974	532.33
October 16 to October 31, 1974	341.22
November 1 to November 15, 1974	478.57
November 16 to November 30, 1974	174.60
December 1 to December 15, 1974	308.55
December 16 to December 31, 1974	389.51
January 1 to January 27, 1975	<u>488.72</u>
Total Due	\$4,533.20

3. On April 12, 1976, the Income Tax Bureau issued a Statement of Deficiency against petitioner, Regina Samuel, imposing a penalty equal to the amount of New York State withholding taxes due from Cosmo for the period June 16, 1974 through January 27, 1975. 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. Accordingly, a Notice of Deficiency dated April 12, 1976 was issued against said petitioner in the amount of \$4,553.20, together with the aforesaid Statement of Deficiency.

4. On August 25, 1975, the Income Tax Bureau issued a Statement of Deficiency against petitioner, Regina Samuel, imposing a penalty equal to the amount of New York State withholding taxes

due from Cosmopolitan for the period December 1, 1973 through January 20, 1975. 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. Accordingly, a Notice of Deficiency dated August 25, 1975 was issued against said petitioner in the amount of \$5,627.21, together with the aforesaid Statement of Deficiency.

5. Cosmopolitan and its subsidiary (or corporate division) Cosmo, were both incorporated in the State of New York. When the petitioner's husband died in 1968, petitioner and her two daughters assumed overall management of the operation of the business of both corporations. Due to adverse economic conditions and a prolonged labor strike, Cosmopolitan and Cosmo ceased doing business in or about February of 1975, at which time assignments for the benefit of creditors were made and filed for both corporations.

6. During the period in question, petitioner, Regina Samuel, and her daughter, Dorothy Buechler, were the president and treasurer, respectively, of both Cosmopolitan and Cosmo. Petitioner, Regina Samuel, had the authorization to sign checks and exercised such authority. Petitioner was frequently present in the plant at which the business of both corporations were conducted. The day-to-day fiscal duties were lodged in one Harry Oster, the controller

of both corporations. Petitioner, Regina Samuel, signed the Reconciliation (Form IT-2103, Income Tax Bureau's Exhibit "F") as president of Cosmopolitan for the year 1973, or authorized a bookkeeper in her employ to so affix her signature. Petitioner knew or should have known that payment of withholding taxes had not been made by either Cosmopolitan or Cosmo.

7. Creditors of Cosmopolitan and Cosmo apparently received pro rata distribution from the proceeds of the auction sale of the assets of both corporations after the making of a general assignment for the benefit of creditors, but the Income Tax Bureau received no such distribution because withholding taxes were not listed on the corporations' schedules of liabilities. Thus, creditors of both corporations received a preference over the monies due and owing the Income Tax Bureau by reason of unpaid withholding taxes.

8. The Internal Revenue Service issued an assessment against petitioner, Regina Samuel, for her failure to collect and pay over Federal withholding taxes of Cosmopolitan and Cosmo. In compliance with a settlement agreement, said petitioner paid all or part of said assessment.

9. Petitioner, Regina Samuel, offered uncontroverted documentary evidence to show that all but the sum of \$733.87 had been

paid to satisfy outstanding and unpaid withholding taxes claimed by the Income Tax Bureau in its Notice and Statement of Deficiency, both dated August 25, 1975 (Income Tax Bureau's Exhibits "D" and "E", respectively) and issued against said petitioner on behalf of Cosmopolitan. The sum of \$733.87 is computed as follows:

<u>WITHHOLDING TAX PERIOD</u>	<u>AMOUNT</u>
December 1 - December 31, 1973	\$ 355.25
December 16 - December 31, 1974	244.84
January 1 - January 20, 1975	<u>133.78</u>
Total Due	\$ 733.87

10. Petitioner, Regina Samuel, offered uncontroverted documentary evidence to show that all but the sum of \$588.72 had been paid to satisfy outstanding and unpaid withholding taxes as claimed by the Income Tax Bureau in its Notice and Statement of Deficiency, both dated April 12, 1976 (Income Tax Bureau's Exhibits "A" and "B", respectively) and issued against said petitioner on behalf of Cosmo. The sum of \$588.72 is computed as follows:

<u>WITHHOLDING TAX PERIOD</u>	<u>AMOUNT</u>
July 1 - July 15, 1974	\$ 100.00*
January 1 - January 27, 1975	<u>488.72</u>
Total Due	\$ 588.72

*The original amount assessed for that period was \$524.70 but petitioner demonstrated that the sum of \$424.70 had been paid.

CONCLUSIONS OF LAW

A. That Cosmopolitan Knitwear Processing Corp. and Cosmo Dye Works, Inc. were employers required to deduct withholding taxes from their respective employees' wages for the periods December 1, 1973 through January 20, 1975 and June 16, 1974 through January 27, 1975, respectively, within the meaning and intent of section 671 of the Tax Law.

B. That petitioner, Regina Samuel, knew, or should have known, that Cosmopolitan Knitwear Processing Corp. and Cosmo Dye Works, Inc. had failed to pay to the Income Tax Bureau the taxes withheld by it for the periods in question, which taxes constituted trust funds pursuant to section 675 of the Tax Law.

C. That petitioner, Regina Samuel, was a person required to collect, truthfully account for and pay over the withholding taxes of the employees of Cosmopolitan Knitwear Processing Corp. and Cosmo Dye Works, Inc. on behalf of said employers, within the meaning and intent of section 685(n) of the Tax Law.

D. That petitioner, Regina Samuel, willfully failed to collect, truthfully account for and pay over the taxes withheld by Cosmopolitan Knitwear Processing Corp. during the period December 1, 1973 through January 20, 1975, to the extent and only in the amount of \$733.87, within the meaning and intent of section 685(g) of the Tax Law. [Levin v. Gallman, 42 N.Y. 2d 32, 396 N.Y.S. 2d 623 (1977)].

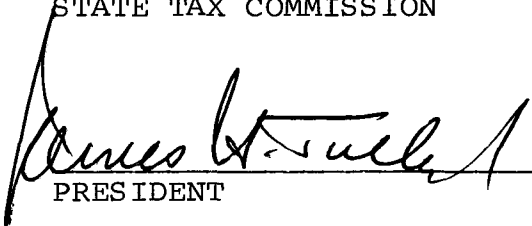
E. That petitioner, Regina Samuel, willfully failed to collect, truthfully account for and pay over the taxes withheld by Cosmo Dye Works, Inc. during the period June 16, 1974 through January 27, 1975, to the extent and only in the amount of \$588.72, within the meaning and intent of section 685(g) of the Tax Law [Levin v. Gallman, 42 N.Y. 2d 32, 396 N.Y.S. 2d 623 (1977)].

F. That the petition of Regina Samuel is granted to the extent that the assessment and penalty due with respect to the unpaid withholding taxes of Cosmopolitan Knitwear Processing Corp. for the period December 1, 1973 through January 20, 1975 be in the reduced amount of \$733.87; that the assessment and penalty due with respect to the unpaid withholding taxes of Cosmo Dye Works, Inc. for the period June 16, 1974 through January 27, 1975 be in the reduced amount of \$588.72; that the Income Tax Bureau is hereby directed to accordingly modify the notices of deficiency issued on August 25, 1975 and April 12, 1976, and that, except as so granted, the petition is in all other respects denied

and, except as so modified, the notices of deficiency issued on August 25, 1975 and April 12, 1976 are sustained.

DATED: Albany, New York
October 6, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER