

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :

of

Donna A. Hayhurst :

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 1972. :

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 7th day of July, 1980, he served the within notice of Decision by certified mail upon Donna A. Hayhurst, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Donna A. Hayhurst  
240 Pendleton Ave.  
Palm Beach, FL

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

7th day of July, 1980.

Dorothy A. Bank

J. Vredenburg

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

July 7, 1980

Donna A. Hayhurst  
240 Pendleton Ave.  
Palm Beach, FL

Dear Ms. Hayhurst:

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

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

---

In the Matter of the Petition :  
of :  
DONNA A. HAYHURST : DECISION  
for Redetermination of a Deficiency or :  
for Refund of Personal Income Tax under :  
Article 22 of the Tax Law for the Year :  
1972.

---

Petitioner, Donna A. Hayhurst, 240 Pendleton Avenue, Palm Beach, Florida, 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 1972 (File No. 13666).

A small claims hearing was held before William Valcarcel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 18, 1980 at 9:15 A.M. Petitioner appeared by Walter Untermeyer, Jr. The Audit Division appeared by Ralph J. Vecchio, Esq. (A. Scopellito, Esq., of counsel).

ISSUE

Whether petitioner is subject to a penalty in accordance with section 685(g) of the Tax Law as a person who willfully failed to collect, or truthfully account for and pay withholding taxes for the year 1972.

FINDINGS OF FACT

1. J. S. Love and Company, Inc. (corporation) was a brokerage firm located in the City and State of New York. The Income Tax Bureau's records indicated that the corporation withheld from its employees New York State personal income taxes in the sum of \$12,361.38 during the year 1972, and remitted

\$10,415.19 for that period. Subsequently, the corporation was billed the balance due of \$1,946.19, along with penalties and interest.

2. On June 30, 1975, the Income Tax Bureau issued a Notice of Deficiency, along with an explanatory Statement of Deficiency, imposing a penalty pursuant to section 685(g) of the Tax Law against petitioner, Donna A. Hayhurst, in the amount of \$1,946.19 for the year 1972. The Income Tax Bureau ascertained that petitioner was a responsible corporate officer since its records indicated that she was listed as a vice-president on the New York State corporate tax return of J. S. Love and Company, Inc. filed for the year 1971.

3. On March 19, 1976, the Income Tax Bureau abated \$1,174.25 of the penalty imposed. Accordingly, the net amount of the penalty at issue was reduced to \$771.94.

4. Petitioner, Donna A. Hayhurst, was employed by the corporation until March, 1972 when she moved to the State of Florida. Although given the title of vice-president, petitioner had no authority in the financial, operational or managerial functions of the corporation.

5. The Audit Division did not disclose when, during the year 1972, the unpaid withholding taxes were collected and/or due from the corporation.

#### CONCLUSIONS OF LAW

A. That petitioner, Donna A. Hayhurst, was not a person, as defined under section 685(n) of the Tax Law, required to truthfully account for, collect and pay over personal income taxes withheld by J. S. Love and Company, Inc. during the year 1972.

B. That petitioner, Donna A. Hayhurst, is not subject to a penalty pursuant to section 685(g) of the Tax Law.

C. That the petition of Donna A. Hayhurst is granted and the Notice of Deficiency issued June 30, 1975 for the year 1972 is cancelled.

DATED: Albany, New York

JUL 07 1980

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER