

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Rhoda Barrett :

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 1974. :

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 5th day of February, 1981, he served the within notice of Decision by certified mail upon Rhoda Barrett, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Rhoda Barrett
211 West 56th St.
New York, NY

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
5th day of February, 1981.

Connie D. Hugelund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Rhoda Barrett :

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 1974. :

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 5th day of February, 1981, he served the within notice of Decision by certified mail upon Robert Kolodney 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. Robert Kolodney
Sherman & Citron
1290 Avenue of the Americas
New York, NY 10019

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
5th day of February, 1981.

Connie R. Haglund

J. Vredenburg

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

February 5, 1981

Rhoda Barrett
211 West 56th St.
New York, NY

Dear Ms. Barrett:

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
Robert Kolodney
Sherman & Citron
1290 Avenue of the Americas
New York, NY 10019
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
RHODA BARRETT	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the year 1974.	:	

Petitioner, Rhoda Barrett, 211 West 56th Street, New York, 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 year 1974 (File No. 21938).

A formal hearing was held before Gasper S. Fasullo, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on July 29, 1980 at 9:15 A.M. Petitioner appeared by Sherman & Citron, Esq. (Robert Kolodney, Esq., of counsel). The Audit Division appeared by Ralph J. Vecchio, Esq. (Irwin Levy, Esq., of counsel).

ISSUE

Whether petitioner was a person required to collect, truthfully account for and pay over to New York State income tax withheld from wages of employees of Maison Petite, Inc. during 1974.

FINDINGS OF FACT

1. From about 1950 until it discontinued business in or about June 1975 and made an assignment for the benefit of creditors, Maison Petite, Inc. ("Maison") of 498 Seventh Avenue, New York, New York was in the business of fashion design.

2. Petitioner's father was the principal shareholder and President of Maison until his death in or about the year 1970.

3. Petitioner had been employed by Maison as a sales person since about 1959; when her father died in 1970 petitioner became a shareholder in and president of Maison.

4. Maison failed to pay over New York State personal income tax withheld from its employees in the sum of \$43,935.71 for the period January 1, 1974 through December 31, 1974, except that the sum of \$16,221.74 was paid on account thereof, leaving a balance due the Income Tax Bureau in the sum of \$27,713.97 for said period.

5. On January 30, 1978, the Audit Division issued a Notice of Deficiency and a Statement of Deficiency against petitioner asserting a penalty equal to the amount of the unpaid New York State withholding tax in the sum of \$27,713.97 for the period aforesaid.

6. After petitioner became president of Maison, she had "the highest authority" in the firm; she could hire and fire employees, and attended periodic (monthly) meetings with the comptroller and other officers and shareholders of Maison, to discuss the affairs of the firm, including the matter of the unpaid withholding taxes due New York State.

7. Also, after she assumed the office of president of Maison, petitioner had the authority to sign checks and on occasion did sign payroll checks, and on occasion did sign tax returns although, petitioner contends, she did not review them or read them.

8. All of the duties assumed by petitioner after the death of her father, as described in paragraphs 6 and 7 above, were in addition to her duties of selling and promotion, performed by the petitioner before the death of her father.

CONCLUSIONS OF LAW

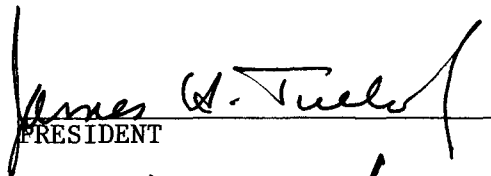
A. That petitioner, Rhoda Barrett, was a person required to collect, truthfully account for and pay over the withholding taxes due from Maison Petite, Inc., within the meaning of subsections (g) and (n) of section 685 of the Tax Law, and that she willfully failed to do so. Therefore, petitioner is liable to a penalty pursuant to section 685(g) of the Tax Law, equal to the total amount of tax due from said corporation.

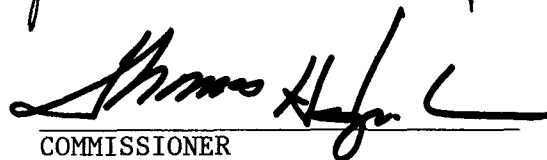
B. That the petition of Rhoda Barrett is denied and the Notice of Deficiency issued on January 30, 1978 is sustained.

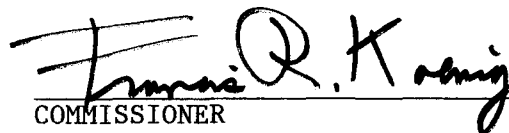
DATED: Albany, New York

FEB 05 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER