

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Mary S. Cronson :

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 1975. :

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 20th day of February, 1981, he served the within notice of Decision by certified mail upon Mary S. Cronson, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mary S. Cronson
Ernst & Ernst, c/o Ernest Honecker
153 E. 53rd St.
New York, NY 10022

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
20th day of February, 1981.

Connie A. Hagelund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

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Personal Income Tax :
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for the Year 1975. :

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 20th day of February, 1981, he served the within notice of Decision by certified mail upon Ernest Honecker 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. Ernest Honecker
Ernst & Ernst
153 E. 53rd St.
New York, NY 10022

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
20th day of February, 1981.

Cornie A. Hegeland

J. Vredenburg

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

February 20, 1981

Mary S. Cronson
Ernst & Ernst, c/o Ernest Honecker
153 E. 53rd St.
New York, NY 10022

Dear Ms. Cronson:

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
Ernest Honecker
Ernst & Ernst
153 E. 53rd St.
New York, NY 10022
Taxing Bureau's Representative

STATE TAX COMMISSION

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 1:15 P.M. Petitioner appeared by Ernst & Ernst, CPA's (Ernest Honeker, Esq.). The Audit Division appeared by Ralph J. Vecchio, Esq. (Samuel Freund, 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 the wages of employees of Tip Tree Corp. for the period January 1, 1975 through December 31, 1975.

FINDINGS OF FACT

1. The Tip Tree Corp. failed to pay New York State personal income tax withheld from the wages of its employees in the amount of \$27,001.35 for the period January 1, 1975 through December 31, 1975.

2. On October 30, 1978, the Audit Division issued a Notice of Deficiency and a Statement of Deficiency against petitioner, Mary S. Cronson, asserting a penalty equal to the amount of the unpaid New York State withholding tax due from Tip Tree Corp. for the period January 1, 1975 through December 31, 1975.

3. The New York State Corporation Franchise Tax Report for the period July 1, 1973 to June 30, 1974, lists petitioner as secretary-treasurer of Tip Tree Corp. The report, however, was signed by another individual, A. Lewis Barnes, as secretary-treasurer and is dated March 14, 1975. The Tax Status Report reveals that no franchise tax reports were filed by Tip Tree Corp. for the periods ended June 30, 1975 through June 30, 1979.

4. Under a Stock Purchase Agreement dated June 14, 1974 entered into by petitioner and another, as sellers, with three other individuals, as purchasers, all 100 shares of stock owned by the sellers in Tip Tree Corp. (50 shares each) were sold to the purchasers. The Closing Statement prepared in connection therewith discloses that as a condition for the sale of stock by petitioner and the other seller to the purchasers of said stock, they were required to and did resign as officers and directors of Tip Tree Corp., as of June 30, 1974.

5. Following the sale of stock as aforesaid, petitioner was no longer associated with or involved in the affairs of Tip Tree Corp.

CONCLUSIONS OF LAW

A. That petitioner, Mary S. Cronson, was not a person under a duty to perform the tasks of collecting, accounting for and paying over the withholding taxes of Tip Tree Corp. for the period January 1, 1975 through December 31, 1975 having sold all of her shares of stock in Tip Tree Corp. and having resigned as an officer (secretary-treasurer) and member of the Board of

Directors thereof prior to January 1, 1975. After such sale of stock and resignations, petitioner completely removed and disassociated herself from the affairs of Tip Tree Corp.

B. That a penalty under section 685(g) of the Tax Law equal to the total amount of the unpaid withholding taxes of Tip Tree Corp. was improperly asserted against petitioner.

C. The petition of Mary S. Cronson is granted and the Notice of Deficiency issued against her on October 30, 1978 is cancelled.

DATED: Albany, New York

FEB 20 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER