

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Bari Fagan : 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 23rd day of October, 1981, he served the within notice of Decision by certified mail upon Bari Fagan, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Bari Fagan
160 S. Middle Neck Rd.
Great Neck, NY 11021

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
23rd day of October, 1981.

Commie A. Huglund

Jay Vredenburg

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

October 23, 1981

Bari Fagan
160 S. Middle Neck Rd.
Great Neck, NY 11021

Dear Mr. Fagan:

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	:	
BARI FAGAN	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1975.	:	

Petitioner, Bari Fagan, 160 South Middle Neck Road, Great Neck, New York 11021, 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 1975 (File No. 21522).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on December 11, 1980 at 1:15 P.M. Petitioner appeared by her father, Bernard Gerber. The Audit Division appeared by Ralph J. Vecchio, Esq. (Angelo A. Scopellito, Esq., of counsel).

ISSUE

Whether petitioner was a person required to collect, truthfully account for and pay over withholding taxes due from Gerber Metals, Inc. for the year 1975.

FINDINGS OF FACT

1. Gerber Metals, Inc., 21 Plandome Road, Manhasset, New York, failed to pay over to the New York State Income Tax Bureau personal income taxes withheld from its employees' wages for the year 1975.

2. On November 28, 1977, the Audit Division issued a Statement of Deficiency against Bari Fagan asserting a penalty equal to the amount of New York State

withholding taxes due from Gerber Metals, Inc. for the year 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, on said date, a Notice of Deficiency for \$3,390.36 was also issued against petitioner.

3. Bari Fagan is the daughter of Bernard Gerber who formed and operated Gerber Metals, Inc., from its inception. She was named secretary of the corporation at the whim of her father who also named her mother president and her sister vice-president. She owned no stock, was not a director of the corporation, received no monetary remuneration, was not on the payroll and was not a signatory on any checking accounts. In 1975 she was a student at Cornell University and has since married.

4. Bernard Gerber organized and operated the corporation, Gerber Metals, Inc., which manufactured metal furniture at Manhasset, Long Island. The company had financial difficulties and owed some \$30,000.00 in Federal withholding taxes which Mr. Gerber was permitted to pay monthly. He is now willing to make restitution for State withholding taxes, which he admits is due and owing. There was no Federal assessment against Florence Gerber, petitioner's mother, nor her sister, Jill Gerber.

CONCLUSIONS OF LAW

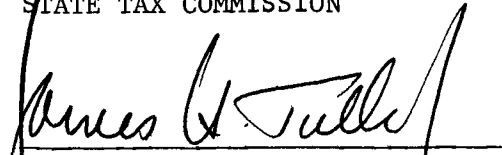
A. That petitioner Bari Fagan was not a person required to collect, truthfully account for and pay over New York State withholding tax due from Gerber Metals, Inc., within the meaning of subdivisions (n) and (g) of section 685 of the Tax Law. Accordingly, petitioner is not subject to a penalty equal to said sum under subsection (g) of section 685 of the Tax Law.

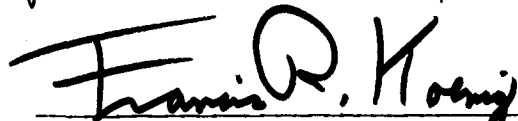
B. That the petition of Bari Fagan is granted and the Notice of Deficiency issued on November 28, 1977 is cancelled.

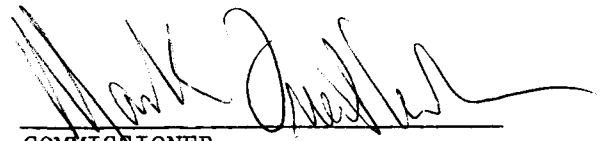
DATED: Albany, New York

OCT 13 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

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

October 23, 1981

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160 S. Middle Neck Rd.
Great Neck, NY 11021

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cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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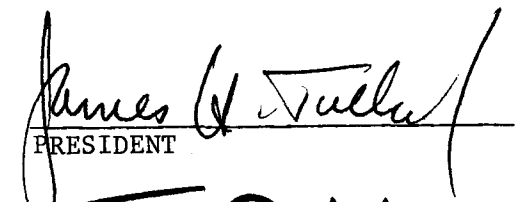
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DATED: Albany, New York

DEC 23 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

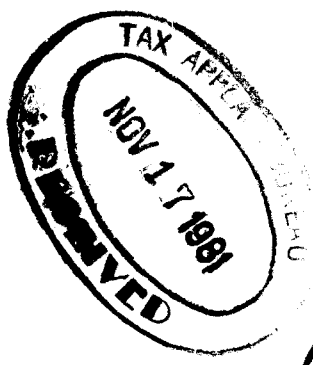
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STATE OF NEW YORK
State Tax Commission
TAX APPEALS BUREAU

STATE CAMPUS
ALBANY, N. Y. 12227

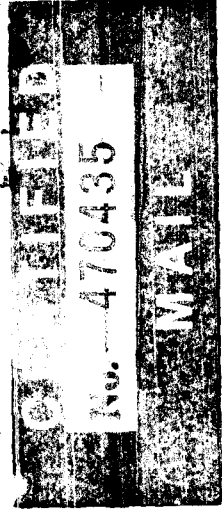
Re [signature]

Bari Fagan
160 S. Middle Neck Rd.
Great Neck, NY 11021



BA suit

*BA suit
11/19/81*



REQUEST FOR BETTER ADDRESS

Requested by <i>Don Schultz</i>	Unit <i>Calendar</i>	Date of Request <i>11/17/81</i>
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Please find most recent address of taxpayer described below; return to person named above.

Social Security Number <i>11-2294158</i>	Date of Petition <i>78/03/27</i>
Name <i>Bain Fagan</i>	
Address <i>160 S. Middle Neck Rd Great Neck N.Y. 11021</i>	

Results of search by Files

<input type="checkbox"/> New address:	
<input type="checkbox"/> Same as above, no better address	
<input checked="" type="checkbox"/> Other:	<i>80 075 # 078 # 077 # 076 #</i>

Searched by <i>SL MS</i>	Section <i>MI</i>	Date of Search <i>11-20-81</i>
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PERMANENT RECORDFOR INSERTION IN TAXPAYER'S FOLDER