

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Florence Gerber :  
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.

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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 Florence Gerber, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Florence Gerber  
80 Hamilton Dr.  
Roslyn, NY 11576

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.

*Ann A. Hugelund*

*J. Vredenburg*

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

October 23, 1981

Florence Gerber  
80 Hamilton Dr.  
Roslyn, NY 11576

Dear Ms. Gerber:

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

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In the Matter of the Petition	:	
of	:	
FLORENCE GERBER	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1975.	:	

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Petitioner, Florence Gerber, 80 Hamilton Drive, Roslyn, New York 11576, 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. 21523).

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 husband 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 Florence Gerber 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 issued against petitioner.

3. Florence Gerber was an investor in Gerber Metals, Inc. having put up \$15,000.00 for the business. She was president and sole stockholder of the company. She was authorized and did sign some corporate checks. Her husband, Bernard Gerber, organized and ran the metal furniture manufacturing business.

CONCLUSIONS OF LAW

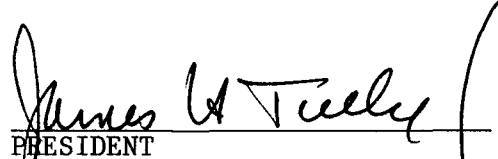
A. That petitioner Florence Gerber was a person required to collect, truthfully account for and pay over New York State withholding tax due from Gerber Metals, Inc., in the sum of \$3,390.36 and willfully failed to do so, within the meaning of subdivisions (n) and (g) of section 685 of the Tax Law. Accordingly, petitioner is subject to a penalty equal to said sum under subsection (g) of section 685 of the Tax Law.

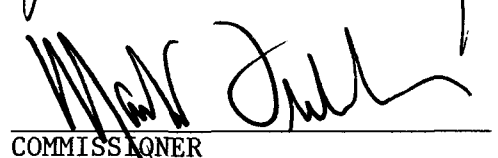
B. That the petition of Florence Gerber is denied and the Notice of Deficiency issued on November 28, 1977 is sustained.

DATED: Albany, New York

OCT 23 1981

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER