

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Jill 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.

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

Jill 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.

Anne P. Hagedorn

Jay Vredenburg

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

October 23, 1981

Jill 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

In the Matter of the Petition	:	
of	:	
JILL 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.	:	

Petitioner, Jill 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. 21524).

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 Jill 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 also issued against petitioner.

3. Jill Gerber is the daughter of Bernard Gerber, who formed and operated Gerber Metals, Inc., from its inception. She was named vice-president of the corporation at the whim of her father who named her mother president and her sister secretary. During the first half of 1975 petitioner was at Cornell University and thereafter was employed full-time by Bloomingdale's. Jill Gerber was not a stockholder, never signed any corporate documents, did not go to the place of business, nor did she receive any monies therefrom.

4. Bernard Gerber organized Gerber Metals, Inc. and ran the business which manufactured metal furniture at Manhasset, Long Island. The company had financial difficulties and owed \$30,000.00 in Federal withholding taxes which Mr. Gerber was permitted to pay monthly. He is now willing to make restitution for the State withholding taxes, which he admits is due and owing. No Federal assessment was made against his wife Florence Gerber, or daughters, Jill Gerber and Bari Gerber Fagan.

CONCLUSIONS OF LAW

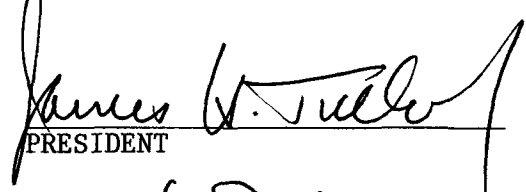
A. That petitioner Jill Gerber was not a person required to collect, truthfully account for and pay over New York State withholding tax due from Gerber Metals, Inc., within the meaning of subdivisions (n) and (g) of section 685 of the Tax Law. Accordingly, petitioner is not subject to a penalty equal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

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

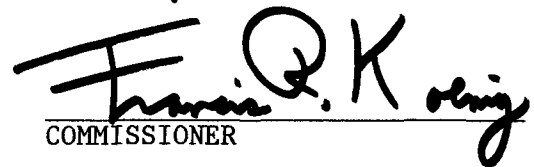
DATED: Albany, New York

OCT 23 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER