

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Leonore Gruskoff :
: 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 Years 1973, 1974 & 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 3rd day of April, 1981, he served the within notice of Decision by certified mail upon Leonore Gruskoff, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Leonore Gruskoff
656 E. 57th St.
Brooklyn, NY 11234

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
3rd day of April, 1981.

Annie A. Hagelund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Leonore Gruskoff :
: 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 Years 1973, 1974 & 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 3rd day of April, 1981, he served the within notice of Decision by certified mail upon Irving W. Berkman 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. Irving W. Berkman
44 Court St.
Brooklyn, NY 11201

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
3rd day of April, 1981.

Carrie A. Hagelund

J. Vredenburg

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

April 3, 1981

Leonore Gruskoff
656 E. 57th St.
Brooklyn, NY 11234

Dear Ms. Gruskoff:

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
Irving W. Berkman
44 Court St.
Brooklyn, NY 11201
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
LEONORE GRUSKOFF	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Years 1973, 1974 and	:	
1975.	:	

Petitioner, Leonore Gruskoff, 656 East 57th Street, Brooklyn, New York 11234, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1973, 1974 and 1975 (File No. 18940).

A formal hearing was held before Edward L. Johnson, Hearing, Officer at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 10, 1979 at 1:15 P.M. Petitioner appeared by Irving W. Berkman, Esq. The Audit Division appeared by Peter Crotty, Esq. (Abraham Schwartz, Esq., of counsel).

ISSUE

Whether petitioner, president of a hospital corporation, is liable for a penalty imposed upon her equal to the amount of income taxes withheld from employees of the corporation which were not paid over to the State of New York.

FINDINGS OF FACT

1. Brooklyn Women's Hospital, Inc. failed to pay over to New York State income taxes withheld from its employees in the amounts of \$12,607.40 for 1973, \$38,692.73 for 1974 and \$3,628.62 for 1975, a total of \$54,928.75.

2. On January 24, 1977, the Audit Division issued a Notice of Deficiency against petitioner as officer of the corporation for \$54,928.75 as a penalty equal to the amount of income taxes withheld from employees of the corporation and not paid over to New York State. An accompanying Statement of Deficiency informed petitioner that she had been deemed to be a "person" under section 685(n) of the Tax Law liable to a penalty. The periods and amount of the penalty attributable to each was delineated as follows:

<u>PERIOD</u>	<u>AMOUNT</u>
April 1, 1973 - April 15, 1973	\$ 2,001.71
April 16, 1973 - April 30, 1973	4,669.47
December 1, 1973 - December 15, 1973	3,342.04
December 16, 1973 - December 31, 1973	2,594.18
January 1, 1974 - January 15, 1974	2,008.24
January 16, 1974 - January 31, 1974	2,375.08
February 1, 1974 - February 15, 1974	2,174.38
February 16, 1974 - February 28, 1974	2,572.85
March 1, 1974 - March 15, 1974	1,959.66
March 16, 1974 - March 31, 1974	2,528.54
April 1, 1974 - April 15, 1974	3,989.82
April 16, 1974 - April 30, 1974	2,470.70
May 1, 1974 - May 15, 1974	1,940.00
May 16, 1974 - May 31, 1974	2,570.08
June 1, 1974 - June 15, 1974	2,099.72
July 1, 1974 - July 15, 1974	2,185.70
August 16, 1974 - August 30, 1974(sic)	2,479.87
November 16, 1974 - November 30, 1974	2,646.23
December 1, 1974 - December 15, 1974	2,786.69
December 16, 1974 - December 31, 1974	1,905.17
January 1, 1975 - January 15, 1975	1,611.47
January 16, 1975 - January 31, 1975	2,017.15
	<u>\$54,928.75</u>

3. Brooklyn Women's Hospital Inc. operated a voluntary nonprofit hospital in Brooklyn, New York. The Women's Division was an auxiliary organization primarily devoted to raising money for the hospital proper from dues, running card parties, luncheons, and other fund-raising activities. Petitioner was first a vice-president and then president of the auxiliary. She spent one or two days a week at the hospital. Some time in 1971, the president of the hospital resigned. The administrator of the hospital, one Lester Rubin,

requested petitioner to become "acting president" of the hospital. A corporate resolution was passed making petitioner "acting president" and a joint signatory with the treasurer on the checks issued by the hospital. A facsimile signature stamp for checks was incorporated into the check writing machine which was kept in the hospital bookkeeping office. Petitioner did not have access to the check signing facsimile stamp and never used it. She had neither desk nor office at the hospital.

4. Petitioner was non-salaried during the entire period of 1973, 1974 and 1975. She never had authority to hire or fire employees. All decisions as to what bills were to be paid and when were made by Lester Rubin, hospital administrator. Petitioner first became aware in 1974 that withholding taxes had not been paid to federal and state authorities. Petitioner and other officers then directed the administrator that these taxes must be paid before anything else. Mr. Rubin stated the taxes would be paid as soon as the hospital had the money to make payment. Petitioner testified that she never saw or signed any tax returns. She had no knowledge of what taxes were paid nor when.

5. Petitioner was 78 years of age at the time of the hearing. Outside of a short period of employment as a bookkeeper prior to her marriage, petitioner had had no business experience. She had no personal knowledge of the fiscal operations of the hospital, and no information as to its financial management.

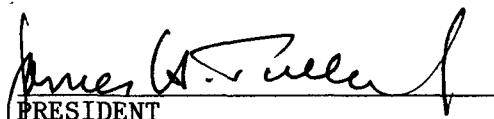
CONCLUSIONS OF LAW

A. That petitioner, Leonore Gruskoff, was not a person required to collect truthfully account for and pay over income tax withheld from employees by Brooklyn Women's Hospital, Inc. within the meaning and intent of section 685(g) of the Tax Law, and therefore is not liable for the penalty provided in said section.

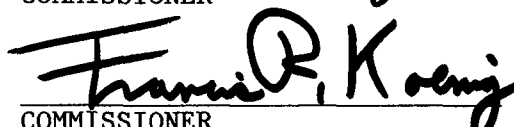
B. That the petition of Leonore Gruskoff is granted and the Notice of Deficiency dated January 24, 1977 is cancelled.

DATED: Albany, New York
APR 03 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

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

April 3, 1981

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656 E. 57th St.
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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
Irving W. Berkman
44 Court St.
Brooklyn, NY 11201
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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STATE OF NEW YORK
State Tax Commission
TAX APPEALS BUREAU

STATE CAMPUS

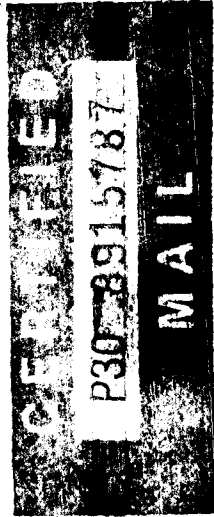
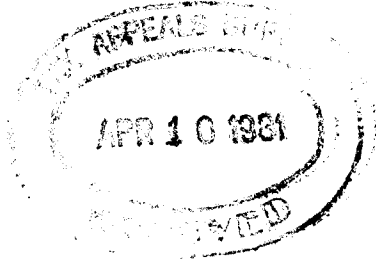
ALBANY, N. Y. 12227

RETURNED

FORWARD
DO NOT REMOVE
IN THIS ENVELOPE

Irving W. Berkman
44 Court St.
Brooklyn, NY 11201

Rep Copy



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CONCLUSIONS OF LAW

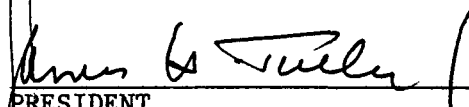
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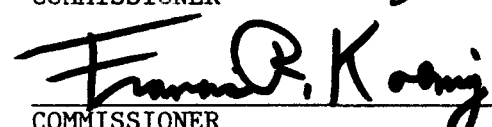
DATED: Albany, New York

APR 03 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER