

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
Yolan Gilbert

:
:
: 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.

State of New York
County of Albany

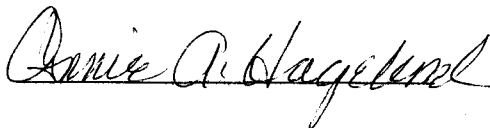
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 26th day of March, 1982, he served the within notice of Decision by certified mail upon Yolan Gilbert, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

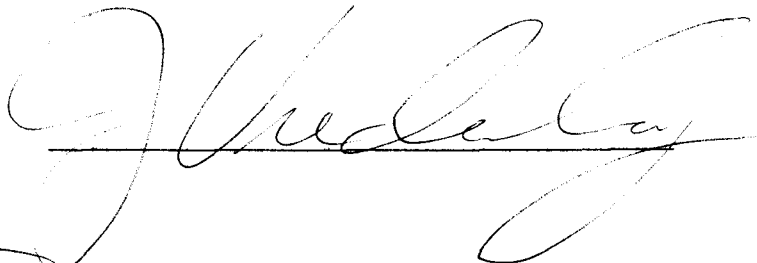
Yolan Gilbert
50 E. 77th St.
New York, NY 10028

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
26th day of March, 1982.





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Yolan Gilbert :

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.

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 26th day of March, 1982, he served the within notice of Decision by certified mail upon Eugene A. Wolkoff the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Eugene A. Wolkoff
Callahan & Wolkoff
67 Wall St.
New York, NY 10005

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
26th day of March, 1982.

Annice A. Haglund

Jay Vredenburg

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

March 26, 1982

Yolan Gilbert
50 E. 77th St.
New York, NY 10028

Dear Mrs. Gilbert:

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
Law Bureau - Litigation Unit
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Eugene A. Wolkoff
Callahan & Wolkoff
67 Wall St.
New York, NY 10005
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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

Petitioner, Yolán Gilbert, 50 East 77th Street, New York, New York 10028, 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 and 1974 (File No. 16194).

A formal hearing was held before Robert A. Couze, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on July 14, 1981 at 10:40 A.M. Petitioner appeared by Callahan & Wolkoff, Esqs. (Eugene A. Wolkoff, Esq., of counsel). The Audit Division appeared by Ralph J. Vecchio, Esq. (Angelo A. Scopellito, Esq., of counsel).

ISSUE

Whether petitioner Yolán Gilbert was a party required to collect, truthfully account for and pay over withholding taxes due from Northerlin Co., Inc.

FINDINGS OF FACT

1. On May 24, 1976, the Audit Division issued a Notice of Deficiency against petitioner in the amount of \$44,833.37 for the years 1973 and 1974. The Notice of Deficiency asserted that petitioner was a person required to collect, truthfully account for, and pay over withholding taxes due from Northerlin Co., Inc. ("Northerlin") pursuant to the provisions of subsections (g) and (n) of section 685 New York Tax Law.

2. The asserted liability was for several withholding periods as follows:

"May 1 - December 31, 1973	\$27,326.14
January 1 - March 31, 1974	6,145.97
June 16 - June 30, 1974	5,967.08
September 1 - September 15, 1974	5,394.18
	<u>\$44,833.37"</u>

3. The corporate employer was in the waterproofing business, with 28 offices throughout the United States.

4. Petitioner did not appear for the hearing because she was 82 years of age and her physical health made it difficult for her to make a personal appearance for the purpose of giving testimony. However, her counsel, with the Audit Division's consent, put in evidence her affidavit asserting her evidence.

5. Petitioner asserted that her only association with Northerlin Co., Inc. was the holding of the position of Secretary/Treasurer. She further asserted that she held the position as a matter of the corporation's convenience since she was generally available when various corporate papers were required to be signed.

6. Petitioner further asserted that she did "not at any time have any authority to sign checks on behalf of the corporation or have any knowledge of any withholding tax deficiencies and was not responsible for or in charge of the payment of salaries or the deduction of withholding taxes. ...[nor did she] have...knowledge as to where the corporation did its banking."

7. Petitioner also asserted that she played no part in the operation of the corporation and that she was not present at the offices of the corporation on more than two or three occasions and that she did not have the power to hire or discharge any of the corporation's employees and that her association with the corporate employer ceased in September, 1972.

8. Petitioner's above assertions were corroborated by Edward M. Gilbert (page 50 of testimony) and Frank R. Verville (page 74 of testimony) and are accepted as fact. Edward M. Gilbert was the corporate employer's operations manager and Frank R. Verville was the corporate employer's advertising manager.

CONCLUSIONS OF LAW

A. That section 685(g) of the Tax Law provides that any person required to collect, truthfully account for, and pay over personal income tax, who willfully fails to collect such tax or truthfully account for and pay over such tax or willfully attempts in any manner to evade or defeat the tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty equal to the total amount of the tax evaded, or not collected, or not accounted for and paid over.

B. That section 685(n) of the Tax Law defines the word "person", for the purpose of section 685(g), and reads as follows:

"For purposes of subsections (g)...the term person includes an individual, corporation or partnership or an officer or employee of any corporation (including a dissolved corporation), or a member or employee of any partnership, who as such officer, employee or member is under a duty to perform the act in respect of which the violation occurs."

C. That petitioner was not a person required to collect, truthfully account for and pay over the personal income tax in issue herein.

D. That the petition of Yolana Gilbert is granted and the Notice of Deficiency herein is cancelled.

DATED: Albany, New York

MAR 26 1982

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER