

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Phyllis Pope : 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 :
1972 & 1973. :

State of New York
County of Albany

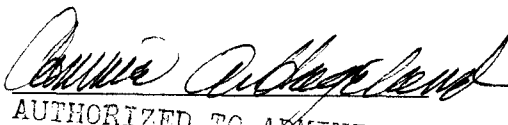
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 12th day of October, 1982, he served the within notice of Decision by certified mail upon Phyllis Pope, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Phyllis Pope
1734 Madison Ave.
New York, NY 10029

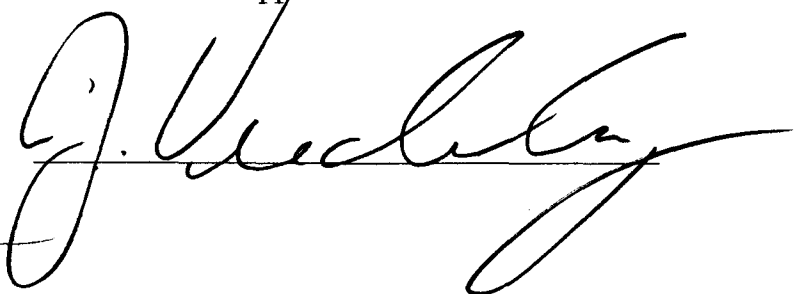
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

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
12th day of October, 1982.



AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174



STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :

of
Phyllis Pope :

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 :
1972 & 1973.

State of New York
County of Albany

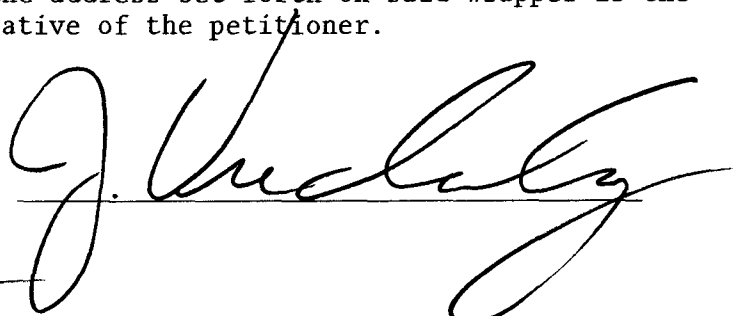
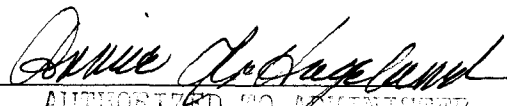
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 12th day of October, 1982, he served the within notice of Decision by certified mail upon Alan S. Bergman the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Alan S. Bergman
Zissu, Stein, Bergman, Couture & Mosher
270 Madison Ave.
New York, NY 10016

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
12th day of October, 1982.



AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO THE LAW
SECTION 172

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

October 12, 1982

Phyllis Pope
1734 Madison Ave.
New York, NY 10029

Dear Ms. Pope:

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
Alan S. Bergman
Zissu, Stein, Bergman, Couture & Mosher
270 Madison Ave.
New York, NY 10016
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
PHYLLIS POPE	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Years 1972 and 1973.	:	

Petitioner Phyllis Pope, 1734 Madison Avenue, New York, New York 10029, 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 1972 and 1973 (File No. 28289).

A small claims hearing was held before Samuel Levy, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on September 16, 1981 at 9:15 A.M. Petitioner Phyllis Pope appeared by Zissu, Stein, Bergman, Couture & Musher (Alan S. Bergman, Esq., of counsel). The Audit Division appeared by Ralph J. Vecchio, Esq. (Irwin Levy, Esq., of counsel).

ISSUES

I. Whether petitioner was a person required to collect, truthfully account for and pay over New York State withholding taxes of Cooperative Association of East Harlem, Inc. (hereinafter "Corporation") for 1972 and 1973.

II. Whether the Notice of Deficiency should be cancelled as a result of the Law Bureau's delay to serve an answer to petitioner.

FINDINGS OF FACT

1. On November 26, 1973, The Audit Division issued a Notice of Deficiency and Statement of Deficiency against petitioner Phyllis Pope asserting a penalty

against her equal to the amount of unpaid New York State withholding taxes due and owing from the Corporation in the amount of \$667.00 for 1972 and 1973.

The penalty was issued on the grounds that petitioner was a person required to collect, truthfully account for and pay over the taxes at issue, and that she willfully failed to do so.

2. The Corporation was a non profit government funded organization which, inter alia, operated a furniture business and a provisions store. It terminated operations sometime in 1973 when it went into bankruptcy.

3. Petitioner was an officer and director of the Corporation, and owned a de minimis interest in its outstanding stock.

4. Petitioner worked as a volunteer in the Corporation with no previous business experience. She contended that she relied completely on the information given her by the store manager at the monthly meeting. The manager was hired by and under the direct supervision of the corporate officers.

At the monthly meeting, petitioner together with other corporate officers reviewed the checks prepared by the store manager for payments of merchandise and salaries. The petitioner, who was authorized as a co-signatory of corporate payments, determined which creditors were or were not to be paid.

5. Petitioner had access to and could obtain financial information from the corporate books and records. She was involved in the financial aspects of the Corporation.

6. Petitioner had knowledge that taxes were withheld from corporate employees salaries.

7. At the hearing, the petitioner's representative argued that the answer, dated April 8, 1981, submitted into evidence by the Law Bureau, was not timely filed nor received by him at his new address.

CONCLUSIONS OF LAW

A. That petitioner Phyllis Pope was a person required to collect, truthfully account for and pay over New York State income tax withheld by the Corporation and willfully failed to do so, within the meaning of subdivisions (g) and (n) of section 685 of the Tax Law. Accordingly, petitioner is subject to a penalty equal to said sum under subdivision (g) of section 685 of the Tax Law.

B. That where the Law Bureau fails to Answer (the petition) within the prescribed time, petitioner may make a motion to the State Tax Commission on notice to the Law Bureau, for a determination on default. The State Tax Commission shall either grant that motion and issue a default decision or shall determine such other appropriate relief that it deems is warranted (20 NYCRR 601.6(4)). That the petitioner has failed to comply with the motion practice requirements pursuant to 20 NYCRR 601.10. Accordingly, no motion exists.

That the record does not indicate that the action or inactions of the Department of Taxation and Finance have unduly prejudiced or adversely affected the petitioner's position in this matter, nor is there any evidence or indication of a denial of due process.

C. That the petition of Phyllis Pope is denied and the Notice of Deficiency dated November 26, 1973 is sustained together with such additional interest as may be legally due.

DATED: Albany, New York

OCT 12 1982

STATE TAX COMMISSION
Robert T. Bullock
ACTING PRESIDENT
Francis R. Koenig
COMMISSIONER
Mark J. Smith
COMMISSIONER