

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Rosa Maria Ricaldone :
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. :

AFFIDAVIT OF MAILING

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 14th day of December, 1982, he served the within notice of Decision by certified mail upon Rosa Maria Ricaldone, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Rosa Maria Ricaldone
238 E. 36th St., Apt. 2F
New York, NY 10016

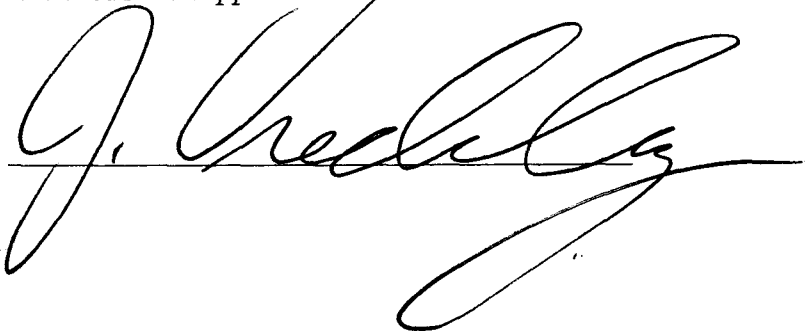
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
14th day of December, 1982.



AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174



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

December 14, 1982

Rosa Maria Ricaldone
238 E. 36th St., Apt. 2F
New York, NY 10016

Dear Ms. Ricaldone:

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

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
ROSA MARIA RICALDONE
for Redetermination of a Deficiency or for
Refund of Personal Income Tax under Article 22
of the Tax Law for the Year 1975.

DECISION

Petitioner, Rosa Maria Ricaldone, 238 East 36th Street, Apartment 2F, New York, New York 10016, 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. 26567).

A small claims hearing was held before William Valcarcel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on August 27, 1981 at 1:15 P.M. Petitioner appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (Irwin A. Levy, Esq. of counsel).

ISSUE

Whether petitioner is subject to a penalty pursuant to section 685(g) of the Tax Law as a person who willfully failed to collect, truthfully account for and pay over withholding taxes of Jacaranda Fashions Ltd.

FINDINGS OF FACT

1. Jacaranda Fashions, Ltd. ("Jacaranda") failed to remit \$1,026.80 in personal income withholding taxes for the period August 1, 1975 through December 31, 1975.

2. On February 26, 1979, the Audit Division issued to petitioner, Rosa Maria Ricaldone, a Statement of Deficiency and Notice of Deficiency in the

amount of \$1,026.80, attributable to withholding tax due from Jacaranda for the period of August 1, 1975 through December 31, 1975.

3. In 1973, petitioner was hired by Claudio and Ellen Campuzano, the principal officers and stockholders of Jacaranda, to work as an office secretary. Her duties included typing, filing, taking orders over the phone, and only when the owners were out of the country, signing checks of up to \$500.00 mainly to meet periodic payrolls (sometimes Mr. & Mrs. Campuzano were out of the country for months at a time).

4. At the beginning of petitioner's employment at Jacaranda, the owners promised her that if the corporation made a profit, she would receive ownership of six percent of the corporate stock.

5. Unknown to the petitioner, the owners of the Jacaranda, Claudio and Ellen Campuzano, listed her on its New York State corporation franchise tax report and Federal income tax return as an officer, i.e., Secretary of the corporation, and stated that she owned six percent of Jacaranda's stock.

6. In 1976, the owners of Jacaranda informed petitioner that the corporation was not making any profit and fired her. She now has another secretarial job.

CONCLUSIONS OF LAW

A. That section 685(g) of the New York State Tax Law provides that "any person required to collect, truthfully account for and pay over the tax imposed by this article who willfully fails to collect such tax...shall...be liable to a penalty equal to the total amount of the tax...not collected or not accounted for and paid over."

B. That petitioner, was not, during any time of her employment as a secretary for Jacaranda Fashions, Ltd., a person (as defined in section 685(n) of the Tax Law) required to collect, truthfully account for and pay over the

tax imposed by Article 22 of the Tax Law. Therefore, petitioner is not liable to a penalty equal to the unpaid withholding tax of Jacaranda Fashions, Ltd.

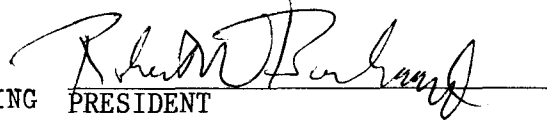
C. That the petition of Rosa Maria Ricaldone is granted and the Notice of Deficiency issued on February 26, 1979 is cancelled.

DATED: Albany, New York

DEC 14 1982

STATE TAX COMMISSION

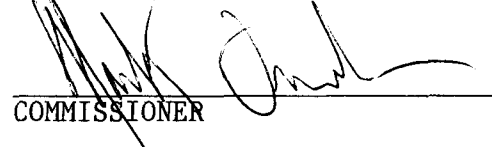
ACTING PRESIDENT

A handwritten signature in dark ink, appearing to read "Robert W. Burdick", written over a horizontal line.

COMMISSIONER

A handwritten signature in dark ink, appearing to read "Francis R. Koehn", written over a horizontal line.

COMMISSIONER

A handwritten signature in dark ink, appearing to read "Mark J. Jones", written over a horizontal line.

TA 26 (9-79)

STATE OF NEW YORK

State Tax Commission

TAX APPEALS BUREAU

STATE CAMPUS

ALBANY, N. Y. 12227

CLAIM CHECK

NO.

330002

☐ HOLD

DATE

1ST NOTICE

2ND NOTICE

RETURN

Detached from
PS Form 3848-A
Oct. 1980

CERTIFIED

P 220 854 305

MAIL

☐ Moved, tell me address
Rosa Maria Ricaldone
238 E. 36th St., Apt. 2B
New York, NY 10016
NEW YORK, N.Y. 10016

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

December 14, 1982

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New York, NY 10016

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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
ROSA MARIA RICALDONE
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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DECISION

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A. That section 685(g) of the New York State Tax Law provides that "any person required to collect, truthfully account for and pay over the tax imposed by this article who willfully fails to collect such tax...shall...be liable to a penalty equal to the total amount of the tax...not collected or not accounted for and paid over."

B. That petitioner, was not, during any time of her employment as a secretary for Jacaranda Fashions, Ltd., a person (as defined in section 685(n) of the Tax Law) required to collect, truthfully account for and pay over the

tax imposed by Article 22 of the Tax Law. Therefore, petitioner is not liable to a penalty equal to the unpaid withholding tax of Jacaranda Fashions, Ltd.

C. That the petition of Rosa Maria Ricaldone is granted and the Notice of Deficiency issued on February 26, 1979 is cancelled.

DATED: Albany, New York

DEC 14 1982

STATE TAX COMMISSION

ACTING PRESIDENT

COMMISSIONER

COMMISSIONER