

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition  
of

Mary H. DeDell

:

:

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 Period :  
8/16/78 - 10/31/78.

State of New York  
County of Albany

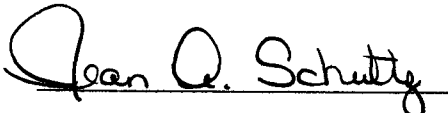
Connie Hagelund, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 22nd day of July, 1983, she served the within notice of Decision by certified mail upon Mary H. DeDell, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mary H. DeDell  
1010 Turtle St.  
Syracuse, NY 13208

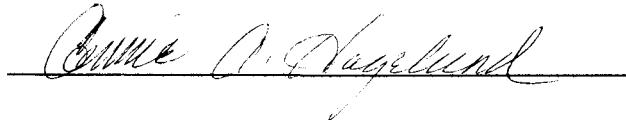
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

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  
22nd day of July, 1983.



AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174



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

July 22, 1983

Mary H. DeDell  
1010 Turtle St.  
Syracuse, NY 13208

Dear Ms. DeDell:

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 Law 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  
Building #9 State Campus  
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

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In the Matter of the Petition	:	
	:	
of	:	
	:	
MARY H. DEDELL	:	DECISION
	:	
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article	:	
22 of the Tax Law for the Period August 16,	:	
1978 through October 31, 1978.	:	

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Petitioner, Mary H. DeDell, 1010 Turtle Street, Syracuse, New York 13208, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the Period August 16, 1978 through October 31, 1978 (File No. 31957).

A small claims hearing was held before Arthur Johnson, Hearing Officer, at the offices of the State Tax Commission, 333 East Washington Street, Syracuse, New York, on October 27, 1982 at 1:15 P.M. Petitioner appeared by Thomas J. Butler, CPA. The Audit Division appeared by Paul B. Coburn, Esq. (Anne Murphy, Esq., of counsel).

ISSUE

Whether petitioner was a person who willfully failed to collect, truthfully account for and pay over the withholding taxes of the employees of Kaufman DeDell Printing, Inc. and thus subject to a penalty equal in amount to said unpaid withholding taxes.

FINDINGS OF FACT

1. Kaufman DeDell Printing, Inc. (hereinafter Kaufman) failed to pay over to New York State personal income taxes of \$1,592.00 withheld from its employees for the withholding filing periods encompassed by the period August 16, 1978

through October 31, 1978. Kaufman ceased business operations as of October 31, 1978.

2. On August 25, 1980, the Audit Division issued a Notice of Deficiency against petitioner, Mary H. DeDell, imposing a penalty equal to the amount of the above New York State withholding taxes due from the corporation on the grounds that petitioner was a person required to collect, truthfully account for and pay over said taxes and that she willfully failed to do so.

3. Petitioner was the President and only officer of the corporation; she was also the sole stockholder and director. Petitioner managed the day to day business affairs and signed all checks as well as the tax returns. Petitioner was aware that the withholding taxes were not remitted when the returns were filed; she continued, however, in an effort to keep Kaufman viable, to purchase materials and supplies.

4. Petitioner argued that the corporation experienced financial difficulties because of the delay of its customers, which included New York State and the U.S. Government, to pay for services rendered. Petitioner went on to state that had these funds come under her control when due, the withholding taxes at issue would have been paid. Petitioner also argued that she acted to the best of her ability in fulfilling her responsibilities as a corporate officer and that her actions did not constitute willfully causing the withholding taxes to go unpaid.

#### CONCLUSIONS OF LAW

A. That petitioner, Mary H. DeDell, was a person required to collect, truthfully account for and pay over New York State withholding taxes due from Kaufman DeDell Printing, Inc. for the period August 16, 1978 to October 31,

1978 in accordance with the meaning and intent of section 685(g) and (n) of the Tax Law.

B. That the term "willful" as used in the statute means an act, default or conduct voluntarily done with knowledge that, as a result, trust funds belonging to the government will be used for other purposes. (Matter of Levin v. Gallman, 42 N.Y.2d 32, 396 N.Y.S.2d 623.)

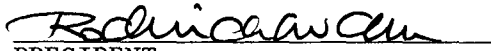
C. That petitioner willfully failed to collect, truthfully account for and pay over the taxes withheld by Kaufman DeDell Printing, Inc. within the meaning and intent of section 685(g) of the Tax Law. Petitioner knew that Kaufman DeDell Printing, Inc. failed to pay over the taxes withheld by it for the period August 16, 1978 through October 31, 1978 even though such taxes constituted trust funds pursuant to section 675 of the Tax Law. Instead of paying over the taxes withheld, petitioner chose to use such funds for other purposes.

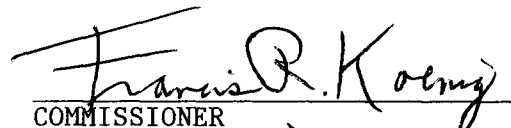
D. That the petition of Mary H. DeDell is denied and the Notice of Deficiency issued August 25, 1980 is sustained.

DATED: Albany, New York

JUL 22 1983

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER