

STATE TAX COMMISSION

James P. Haglund
Authorized to administer oaths
pursuant to Tax Law section 174

STATE TAX COMMISSION

Conner A. Daymond
Authorized to administer oaths
pursuant to Tax Law section 174

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

February 29, 1984

Blanche Baker
2000 Linwood Ave.
Fort Lee, NJ 07024

Dear Mrs. Baker:

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, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only 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
H. Sheldon Kaufman
1440 Broadway
New York, NY 10018
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
BLANCHE BAKER	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1976	:	

Petitioner, Blanche Baker, 2000 Linwood Avenue, Fort Lee, New Jersey 07024, 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 1976 (File No. 32236).

A small claims hearing was held before Allen Caplowaith, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on Tuesday, May 10, 1983 at 10:45 A.M., with all briefs to be submitted by July 10, 1983. Petitioner appeared by H. Sheldon Kaufman, C.P.A. The Audit Division appeared by John P. Dugan, Esq. (Paul Lefebvre, Esq., of counsel).

ISSUE

Whether petitioner was a person, as defined in section 685(n) of the Tax Law, under a duty to collect, truthfully account for and pay over the New York State withholding taxes of Wesco Wire Goods Co., Inc. and, if such a person, was her failure to collect, truthfully account for and pay over said withholding taxes willful.

FINDINGS OF FACT

1. On April 30, 1979, the Audit Division issued a Statement of Deficiency to petitioner, Blanche Baker, imposing a penalty, pursuant to section 685(g) of the Tax Law, equal in amount to the unpaid New York State withholding taxes due

and owing from Wesco Wire Goods Co., Inc. (hereinafter "Wesco"), for the period July 1, 1976 to December 31, 1976. The aforementioned Statement was issued on the grounds that petitioner was a person required to collect, truthfully account for and pay over the withholding taxes due from Wesco and that she willfully failed to do so. Accordingly, on April 30, 1979, a Notice of Deficiency was issued to petitioner for 1976 in the amount of \$2,802.70.

2. Petitioner was secretary and treasurer of Wesco and also the owner of one-half of its outstanding stock. Petitioner's former husband, Benny Baker, was president of Wesco and also a one-half owner of its outstanding stock.

3. Prior to June 20, 1976 petitioner was active in the day to day operations of Wesco. She had authority to sign corporate checks, made payments to creditors and also served as Wesco's bookkeeper. The 1975 New York State Corporation Tax Report was signed by petitioner as secretary on June 15, 1976.

4. Due to irreconcilable marital and business differences petitioner's former husband, on or about June 20, 1976, effectively forced her out of Wesco's daily operations. Mr. Baker changed Wesco's corporate checking account and all other bank accounts so that petitioner could no longer sign corporate checks or manage corporate funds. A new bookkeeper was hired to carry out the duties and functions previously performed by petitioner.

5. Petitioner challenged her former husband for control of Wesco and several court actions followed, both in New Jersey as to divorce and in New York with respect to Wesco's affairs. On the advise of her attorney, petitioner, from shortly after June 20, 1976 until approximately October 12, 1976, would visit Wesco's offices each day, however, she was not allowed to perform any services. Petitioner continued to receive her normal salary during the period June 20, 1976 to October 12, 1976.

6. As the result of the legal proceedings for the control of Wesco, one Robert B. Blaikie was appointed receiver for Wesco pursuant to the order of the Supreme Court of the County of New York dated October 12, 1976. During the period of receivership Benny Baker remained active in Wesco's day to day affairs as evidenced by his signature on Form IT-2103, Reconciliation of Personal Income Tax Withheld, dated February 28, 1977. Petitioner did not visit Wesco's offices nor did she receive any salary from the corporation after October 12, 1976. Wesco was ultimately dissolved, however, all funds generated from said dissolution were pledged to secure certain bank loans.

7. The Internal Revenue Service issued a 100% personal penalty assessment to petitioner equal in amount to the past due Federal withholding taxes of Wesco. Petitioner attended a conference with representatives from the Internal Revenue Service concerning her liability for said 100% personal penalty assessment. As the result of said conference petitioner's arguments were placed in writing via a letter dated March 4, 1980. As of the date of the hearing held herein the Internal Revenue Service has taken no action to either collect or cancel the penalty assessment issued against petitioner.

CONCLUSIONS OF LAW

A. That for the period in question, July 1, 1976 to December 31, 1976, petitioner was not a person as defined in section 685(n) of the Tax Law under a duty to collect, truthfully account for and pay over the New York State withholding taxes of Wesco. That on or about June 20, 1976 petitioner was prohibited from participating in Wesco's daily operations or decision making process. That after June 20, 1976 petitioner had no control over Wesco's finances nor could she direct payment to Wesco's creditors. That since petitioner was not a person required to collect, truthfully account for and pay over the

New York State withholding taxes of Wesco during the period in question, she cannot be held liable for a personal penalty assessment issued pursuant to section 685(g) of the Tax Law for said period.


B. That the petition of Blanche Baker is granted and that the Notice of Deficiency dated April 30, 1979 is cancelled in its entirety.

DATED: Albany, New York

STATE TAX COMMISSION

FEB 29 1984


PRESIDENT


COMMISSIONER


COMMISSIONER