

STATE OF NEW YORK

STATE TAX COMMISSION

---

In the Matter of the Petition :  
of :  
Jacqueline H. Hunter : AFFIDAVIT OF MAILING  
for Redetermination of a Deficiency or for Refund :  
of NYS Personal Income Tax under Article 22 if the :  
Tax Law and Ne York City Personal Income Tax under :  
Chapter 46, Title T of the Administrative Code of :  
the City of New York for the Year 1977. :

---

State of New York }  
ss.:  
County of Albany }

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 9th day of March, 1984, he served the within notice of Decision by certified mail upon Jacqueline H. Hunter, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Jacqueline H. Hunter  
1049 Park Ave.  
New York, NY 10028

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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  
9th day of March, 1984.

David Parchuck

Comm. Adm. Sec.  
Authorized to administer oaths  
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :  
of

Jacqueline H. Hunter : AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or for Refund :  
of NYS Personal Income Tax under Article 22 of the  
Tax Law and New York City Income Tax under Chapter:  
46, Title T of the Administrative Code of the City  
of New York for the Year 1977. :

State of New York }  
County of Albany } ss.:

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 9th day of March, 1984, he served the within notice of Decision by certified mail upon Richard Joannides, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Richard Joannides  
Eleven Park Place  
New York, NY 10007

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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  
9th day of March, 1984.

*David Parchuck*

*Bonnie A. Highland*

Authorized to administer oaths  
pursuant to Tax Law section 174

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

March 9, 1984

Jacqueline H. Hunter  
1049 Park Ave.  
New York, NY 10028

Dear Ms. Hunter:

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 & 1312 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  
Richard Joannides  
Eleven Park Place  
New York, NY 10007  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

---

In the Matter of the Petition	:	
of	:	
JACQUELINE H. HUNTER	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of New York State Personal Income Tax	:	
under Article 22 of the Tax Law and New York	:	
City Personal Income Tax under Chapter 46,	:	
Title T of the Administrative Code of the City	:	
of New York for the year 1977.	:	

---

Petitioner, Jacqueline H. Hunter, 1049 Park Avenue, New York, New York 10028, filed a petition for redetermination of a deficiency or for refund of New York State personal income tax under Article 22 of the Tax Law and New York City personal income tax under Chapter 46, Title T of the Administrative Code of the City of New York for the year 1977. (File No. 32229).

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 June 23, 1983 at 2:45 P.M. with all briefs to be submitted by August 23, 1983. Petitioner appeared with Richard Joannides, Esq. The Audit Division appeared by John P. Dugan, Esq. (Paul Lefebvre, Esq., of counsel).

ISSUE

Whether petitioner is liable for penalties asserted under section 685(g) of the Tax Law and section T46-185.0(g) of the Administrative Code of the City of New York, as a person who willfully failed to collect, truthfully account for and pay over the New York State and New York City withholding taxes due from Wentworth Press Inc.

FINDINGS OF FACT

1. Wentworth Press Inc. (Wentworth), 231 East 51st Street, New York, New York 10022, failed to pay over the New York State and New York City personal income taxes withheld from the wages of its employees for the calendar year 1977.

2. On October 29, 1979, the Audit Division issued a Statement of Deficiency in conjunction with a Notice of Deficiency against Jacqueline H. Hunter<sup>1</sup> (hereinafter petitioner) wherein penalties were asserted pursuant to section 685(g) of the Tax Law and section T46-185.0(g) of the Administrative Code of the City of New York for amounts equal to the New York State and New York City withholding taxes due from Wentworth for said year.

3. The total deficiency asserted for said year was \$1,367.27. Such amount, pursuant to an annual Employers Return of Tax Withheld, was comprised of \$989.50 due New York State and \$377.77 due New York City.

4. The Corporation Franchise Tax Return filed by Wentworth for the year 1977 lists two officers as follows:

<u>Name</u>	<u>Official Title</u>	<u>Salary</u>
W. I. Fischman	President	\$16,050.00
J. H. Hunter	Vice President	17,735.00

Said return was signed by Walter Fischman, President.

5. Petitioner first became associated with Wentworth, a book publishing company, in or about 1973 at Mr. Fischman's request. Prior to that time petitioner was engaged in activities as a free-lance writer.

---

<sup>1</sup> Petitioner has remarried and her legal name is currently Jacqueline H. Hubbard.

6. Petitioner's duties and responsibilities at Wentworth were related to editorial work. She found free-lance writers to whom she gave assignments. When an assignment was completed she edited it, fitted the copy to the layouts, forwarded it to the typesetter and submitted it to the client for its approval.

7. Although petitioner had authority to sign checks, she did so only in emergency situations when Mr. Fischman was out of town.

8. Petitioner testified that Mr. Fischman was in charge of the company's finances. He kept the business books and records and normally wrote the corporate checks.

9. Petitioner and Mr. Fischman were Wentworth's only full-time employees. Occasionally, temporary office employees were hired. Such hiring was done by Mr. Fischman. All writers were given assignments on an independent contractor basis.

10. Petitioner was given stock in Wentworth by Mr. Fischman. She did not recall the percentage of stock which she held.

11. Petitioner had never made a contribution of capital to Wentworth.

12. Petitioner never signed Wentworth's tax returns.

#### CONCLUSIONS OF LAW

A. That section 685(g) of the Tax Law and section T46-185.0(g) of the Administrative Code of the City of New York provide that:

"Any person required to collect, truthfully account for and pay over the tax imposed by this article/part 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 pursuant to section 685(n) of the Tax Law and section T46-185.0(n) of the Administrative Code of the City of New York, 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, Jacqueline H. Hunter, was not a person required to collect, truthfully account for and pay over the New York State and New York City withholding taxes of Wentworth during the year 1977.

D. That the petition of Jacqueline H. Hunter is granted and the Notice of Deficiency dated October 29, 1979 is hereby cancelled.


DATED: Albany, New York

STATE TAX COMMISSION

MAR 09 1984

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER