

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

DORIS H. GRIFFIN

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article ~~(2)~~ 22 of the :
Tax Law for the ~~Year(s)~~ Period ~~(s)~~ :
July 1, 1970 through December 31, 1971.

State of New York
County of Albany

John Huhn , 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 25th day of August , 1978, ~~he~~ served the within
Notice of Decision by (certified) mail upon Doris H. Griffin

(~~representative of~~) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed

as follows: Ms. Doris H. Griffin
43 Wincanton Drive
Fairport, New York 14450

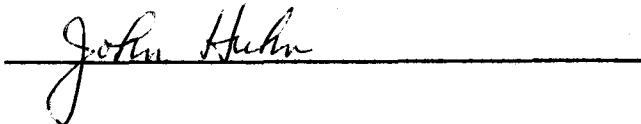
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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

25th day of August , 19 78





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
DORIS H. GRIFFIN

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article (x) 22 of the :
Tax Law for the ~~Year(s)~~ Period (x) :
July 1, 1970 through December 31, 1971.

State of New York
County of Albany

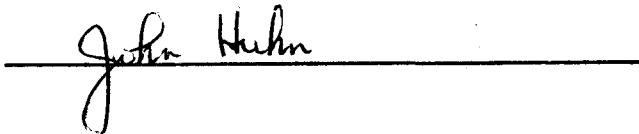
John Huhn , being duly sworn, deposes and says that
xhe is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 25th day of August , 1978, xhe served the within
Notice of Decision by (certified) mail upon Max T. Stoner
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Max T. Stoner, Esq.
Woods, Oviatt, Gilman, Sturman & Clarke
44 Exchange Street
Rochester, New York 14614
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

25th day of August , 1978.







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

August 25, 1978

JAMES H. TULLY JR., PRESIDENT
MILTON KOERNER
THOMAS H. LYNCH

Ms. Doris H. Griffin
43 Wincanton Drive
Fairport, New York 14450

Dear Ms. Griffin:

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 **(x) 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 the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,

Joseph Chyrywaty
Hearing Examiner

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 | : | |
| DORIS H. GRIFFIN | : | DECISION |
| for Redetermination of a Deficiency or | : | |
| for Refund of Personal Income Tax under | : | |
| Article 22 of the Tax Law for the Period | : | |
| July 1, 1970 through December 31, 1971. | : | |

Petitioner, Doris H. Griffin, 43 Wincanton Drive, Fairport, New York 14450, 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 July 1, 1970 through December 31, 1971 (File No. 13207).

A small claims hearing was held before Joseph Chyrywaty, Hearing Officer, at the offices of the State Tax Commission, One Marine Midland Plaza, Rochester, New York, on August 12, 1977 at 10:45 A.M. Petitioner appeared by Max T. Stoner, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Richard Kaufman, Esq., of counsel).

ISSUE

Whether petitioner was a person required to collect, truthfully account for and pay over to New York State, income tax withheld from the wages of employees of The Griffin Agency, Inc. during the period July 1, 1970 through December 31, 1971.

FINDINGS OF FACT

1. The Griffin Agency, Inc. failed to pay New York State personal income tax withheld from the wages of its employees in the amount of \$892.77 for the period July 1, 1970 through December 31, 1971.

2. On September 24, 1973, the Income Tax Bureau issued a Notice of Deficiency and a Statement of Deficiency against petitioner, asserting a penalty equal to the amount of unpaid New York State withholding tax due from The Griffin Agency, Inc., for the period July 1, 1970 through December 31, 1971.

3. The Griffin Agency, Inc. (an advertising agency) was formed in 1970 by Doris H. Griffin, Larry K. Hamilton and Lawrence S. Reynolds. Petitioner's name was used in the corporate name because she was known in the advertising business in the Rochester area. Petitioner served as president, Larry K. Hamilton as vice-president, and Lawrence S. Reynolds as secretary-treasurer of said agency. Petitioner testified that she and Mr. Hamilton received a salary of approximately \$8,000.00 each and that Mr. Reynolds received no salary. Petitioner further testified that she received shares of stock in The Griffin Agency, Inc. in return for her services.

4. Petitioner claimed that she did not have the authority to sign checks until November 10, 1972. Accordingly, she asserted that it was not until that time that she became aware of the fact

that withholding taxes had not been paid; thus, she claimed that she was not a responsible officer during the period in question. Petitioner introduced into evidence a copy of a certificate of a resolution of the Board of Directors of The Griffin Agency, Inc. that an account be opened at Central Trust Company, Rochester, New York, and that "Dee H. Griffin" be authorized to sign checks and other instruments. The certificate (dated November 10, 1972) certified that the resolution was adopted November 9, 1972. The certificate carried account number 152-422-2 and matched bank signature cards which indicated that until November 10, 1972, petitioner had no authority to sign checks.

5. The Income Tax Bureau introduced a copy of a certificate of a similar corporate resolution authorizing that an account be opened at the same bank and that either "Dee H. Griffin" or "Larry K. Hamilton" be authorized to sign checks and other instruments. The certificate (dated February 8, 1972) certified that the resolution was adopted June 20, 1970; it also bore the notation "Tax Acct." Neither were signature cards presented by petitioner to correspond with this resolution.

6. Petitioner signed checks in payment of Federal and State withholding tax liabilities for 1972, after she became aware that they were due.

CONCLUSIONS OF LAW

A. That petitioner, Doris H. Griffin, was a person required to collect, truthfully account for and pay over New York State withholding taxes due from The Griffin Agency, Inc. for the period July 1, 1970 through December 31, 1971, in accordance with the meaning and intent of section 685(n) of the Tax Law.

B. That petitioner willfully failed or caused The Griffin Agency, Inc. to willfully fail to collect, truthfully account for and pay over New York State withholding taxes due from said corporation for the period July 1, 1970 through December 31, 1971. Accordingly, a penalty equal to the total amount of unpaid withholding taxes was properly asserted against her, in accordance with the meaning and intent of section 685(g) of the Tax Law.

C. That the petition of Doris H. Griffin is denied and the Notice of Deficiency issued September 24, 1973 is sustained.

DATED: Albany, New York
August 25, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER