

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Loretta Gail Pezzuto :

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 Years 1972, 1973. :

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 4th day of April, 1980, he served the within notice of Decision by certified mail upon Loretta Gail Pezzuto, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

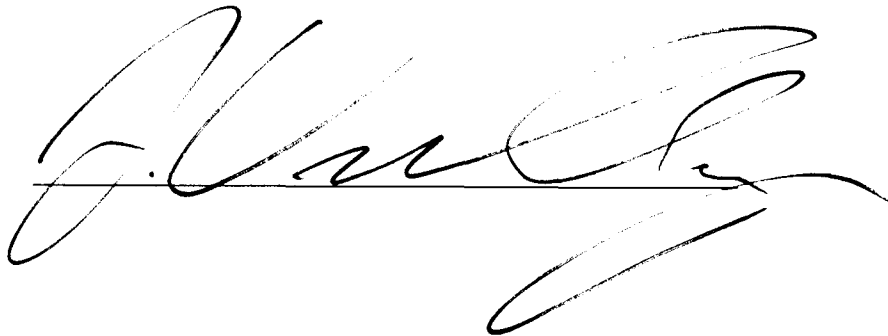
Loretta Gail Pezzuto
23 74th St.
Brooklyn, NY 11209

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
4th day of April, 1980.

Jeanne Knapp



STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Loretta Gail Pezzuto :

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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 Years 1972, 1973. :

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 4th day of April, 1980, he served the within notice of Decision by certified mail upon Joseph A. Monica the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. Joseph A. Monica
Monica & Feury
295 Madison Ave.
New York, NY 10017

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
4th day of April, 1980.

Janne Knapp

[Signature]

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

April 4, 1980

Loretta Gail Pezzuto
23 74th St.
Brooklyn, NY 11209

Dear Ms. Pezzuto:

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
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Joseph A. Monica
Monica & Feury
295 Madison Ave.
New York, NY 10017
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
LORETTA GAIL PEZZUTO	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Years 1972 and 1973.	:	

Petitioner, Loretta Gail Pezzuto, 23 74th Street, Brooklyn, New York 11209, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1972 and 1973 (File No. 14679).

A formal hearing was held before Edward L. Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 17, 1978 at 1:15 P.M. Petitioner appeared by Monica & Feury (Joseph A. Monica, Esq., of counsel). The Income Tax Bureau appeared by Peter Crotty, Esq. (Francis Cosgrove and Paul Lefevbre, Esqs., of counsel).

ISSUE

Whether petitioner is liable for the penalty imposed on her, in accordance with section 685(g) of the Tax Law, with respect to unpaid New York State withholding taxes due from AJP Dress Corp.

FINDINGS OF FACT

1. AJP Dress Corp. failed to pay over to the New York State Income Tax Bureau \$3,600.73 in income taxes withheld from its employees for 1972, and \$5,597.60 in said taxes for 1973.

2. On February 24, 1976, the Income Tax Bureau issued a Notice of Deficiency against petitioner for a penalty equal to the amount of the income

taxes withheld and unpaid, namely \$9,198.33. An accompanying Statement of Deficiency informed petitioner that she had been found to be a "person" (under section 685(n) of the Tax Law) liable to a penalty.

3. AJP Dress Corp. was a dress manufacturer contracting to make ladies' dresses. The corporation was organized in 1972 by petitioner's husband, Albert J. Pezzuto. Petitioner was president of the corporation. All capital stock was owned by Albert J. Pezzuto.

4. Petitioner appeared at the hearing and testified that she had the authority to sign payroll checks, but signed no other checks. Albert J. Pezzuto has sole control of the business. Petitioner was a part-time bookkeeper at a salary of \$160.00 per week. Petitioner stated that tax returns were prepared by a public accountant and that she did not know that withholding taxes were not being paid. Petitioner thought that she may have signed some withholding tax returns at the direction of her husband, but she wasn't sure. She had been told that she was president of the corporation; however, she never had any part in its operation other than in the capacity of a part-time bookkeeper.

5. A reconciliation of income taxes withheld from employees for 1973 was filed by AJP Dress Corp. on January 31, 1974 and signed by A.J. Pezzuto, Secretary. The reconciliation indicated that 99 wage statements were submitted showing tax of \$5,597.60 withheld for 1973.

CONCLUSIONS OF LAW

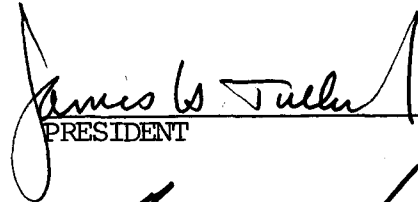
A. That petitioner, Loretta Gail Pezzuto, was not a person required to collect, truthfully account for and pay over income tax withheld by AJP Dress Corp. within the meaning of subdivision (n) and (g) of section 685 of the Tax Law.

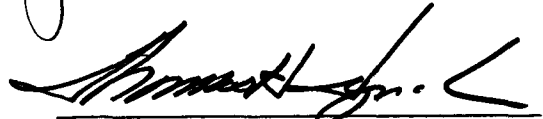
B. That the petition of Loretta Gail Pezzuto is granted and the Notice of Deficiency dated February 24, 1976 is cancelled.

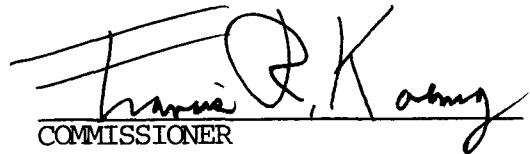
DATED: Albany, New York

APR 4 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER