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## BUREAU OF LAW

## MEMORANDUM

*Income Tax Determinations*  
*A-Z*  
*Reinecke, Walter*  
*Est. of*

TO: Commissioners Murphy, Palestin & Macduff  
FROM: Solomon Sien, Hearing Officer  
SUBJECT: ESTATE OF WALTER REINECKE

Application for Revision or  
Refund of Personal Income Tax  
under Article 16 of the Tax  
Law for the year 1958.

A hearing with reference to the above matter was held before me at 80 Centre Street, New York City, N.Y. on November 13, 1964. The appearances and the evidence produced were as shown in the stenographic minutes and exhibits submitted herewith.

The issue involved herein is the constitutionality of Section 1 of Chapter 60 of the Laws of 1959, which provides that "with respect to the calendar year 1958 and any fiscal year ending in 1959 no tax under Article 16 of the Tax Law shall be payable by or on behalf of any person, provided, however, taxes shall be paid thereunder by or on behalf of (a) all trusts, estates and taxpayers who died during such year with respect to net income and net capital gains\*\*\*."

The testator died September 3, 1958, a resident of the State of New York. A final return for the period from January 1, 1958 to September 3, 1958, the date of death of the decedent, was filed on his behalf by his executor and a tax paid in the sum of \$22,333.81. Thereafter an amended return was filed in which a deduction of \$5,281.51 was claimed for interest. The Income Tax Bureau allowed said deduction and on Form IT-111 computed the tax due on the amended return in the sum of \$22,019.56 and refunded to the executor the sum of \$314.25. Thereafter the executor filed an application for refund claiming that the imposition of normal income taxes for persons who died in 1958 was in violation of the taxpayer's constitutional rights.

In the case of Pattison v. Murphy, decided in Supreme Court, Albany County on May 31, 1961 by Mr. Justice Bookstein, which case was reported in 215 N.Y.S. 2d 802, it was held that the separate classifications of those who died during 1958 and those who were alive on January 1, 1959 were a constitutional exercise of the powers of the Legislature and that such classification violate no provisions of either the Federal or the State Constitutions.

For the reasons stated above, I recommend that the determi-

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nation of the Tax Commission in this matter be substantially in the form submitted herewith.

FEB 26 1965

~~/s/ ROBERT J. JONES~~  
Hearing Officer

\_\_\_\_\_  
Approved

\_\_\_\_\_  
Approved

SS/kk

STATE OF NEW YORK  
STATE TAX COMMISSION

- - - - -  
IN THE MATTER OF THE APPLICATION  
OF  
WALTER BEINECKE, JR., as Executor  
of the ESTATE OF WALTER BEINECKE  
FOR REVISION OR REFUND OF PERSONAL INCOME  
TAXES UNDER ARTICLE 16 OF THE TAX LAW FOR  
THE YEAR 1958  
- - - - -

An application for revision or refund of personal income taxes under Article 16 of the Tax Law for the year 1958 having been filed by Walter Beinecke, Jr., as executor of the Estate of Walter Beinecke, deceased, and a hearing having been held in connection therewith at the office of the State Tax Commission, 80 Centre Street, New York, New York on the 18th day of November, 1958 before Solomon Sica, Hearing Officer of the Department of Taxation and Finance, at which hearing the taxpayer was represented by Seidman & Seidman, C.P.A.'s by Benjamin Grund and Jacques Boral, Certified Public Accountants and the matter having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That the testator, Walter Beinecke, died on September 3, 1958 a resident of New York State; that a final personal income tax return was filed on behalf of Walter Beinecke, the decedent taxpayer herein, by the executor of his estate for the period January 1, 1958 up to September 3, 1958, the date of his death, pursuant to which there was computed to be due a tax in the sum of \$22,333.81 which tax has been paid; that thereafter

based upon an amended return filed on behalf of the decedent showing interest expense which was omitted as a deduction, the State Tax Commission granted a partial refund of tax.

(2) That section 1 of Chapter 68 of the Laws of 1959 provides in part as follows:

"Section 1. Notwithstanding any provisions of any other law, with respect to the calendar year nineteen hundred fifty-eight and any fiscal year ending in nineteen hundred fifty-nine, (1) no taxes under article sixteen of the tax law shall be payable by or on behalf of any taxpayer, provided however, taxes shall be paid thereunder by or on behalf of (a) all trusts, estates and taxpayers who died during such years, with respect to net income and net capital gain."

(3) That, thereafter, Walter Heinecke, Jr. filed a timely application for revision or refund for the entire taxes paid for the year 1958 on the ground that to forgive the tax to one class of taxpayers who are alive and to fail to forgive the tax of those who died in 1958 is discriminatory and in violation of the taxpayer's constitutional rights.

Based upon the foregoing findings and all the evidence presented herein, the State Tax Commission hereby

**DETERMINES:**

That the income of the decedent taxpayer for the period January 1, 1958 to September 3, 1958, the date of his death, was subject to the payment of normal tax in accordance with section 1 of Chapter 68 of the Laws of 1959 and in accord with the court's decision in the case of Edward H. Pattison et al. v. Joseph H. Murphy et al., 28 Misc. 664, 215 NYS 2d 802; that, accordingly, there can be no recomputation, resettlement, revision or refund of the

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taxes for the year 1958 and that the taxpayer's application for revision or refund with respect thereto be and the same is hereby denied.

DATED: Albany, New York on the 13th day of October, 1965.

**STATE TAX COMMISSION**

/s/

JOSEPH H. MURPHY  
**President**

/s/

IRA J. PALESTIN  
**Commissioner**

/s/

JAMES R. MACDUFF  
**Commissioner**