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MEMORANDUM

Income Tax Determinations
A-2

TO: Commissioners Murphy, Palestin & Macduff

FROM: Solomon Sies, Hearing Officer

SUBJECT: AGNES HILLMAN, Executrix of the Estate of
H. M. HILLMAN, Deceased

Application for Revision or Refund of
Personal Income Taxes under Article 16
and Unincorporated Business Taxes under
Article 16-A of the Tax Law for the years
1955, 1956 and 1957

Assessment #FA-87747 - 1955
Assessment #FA-87748 - 1956
Assessment #FA-87749 - 1957

A hearing with reference to the above matter was held before me at 80 Centre Street, New York, N.Y. on November 16, 1964. The appearances and the evidence produced were as shown in the stenographic minutes and exhibits submitted herewith.

The issue involved herein is whether funds found in a safe-deposit box of the decedent taxpayer and withdrawn by his widow ten (10) days before his death represents additional income from the decedent taxpayer's business attributable to the years 1955, 1956 and 1957, based upon field audit examination.

The executrix did not appear at the hearing. However, an accountant for the decedent taxpayer and an officer of the Chase Manhattan Bank testified on behalf of the decedent.

During the years 1955, 1956 and 1957, and prior thereto, the decedent was engaged in business as a jobber of brass and copper at 188 Flatbush Avenue Extension, Brooklyn, New York, under the name of H.M. Hillman. He also maintained a branch office at 125 Market Street, Philadelphia, Pennsylvania.

The taxpayer died on May 10, 1957, leaving an estate subject to taxation in the sum of \$1,145,801.30. At the time of his death, he was confined to a hospital as a result of an automobile accident. Prior to his death, the decedent taxpayer maintained a safe-deposit box at the Chase Manhattan Bank at 25 Broadway, New York, N.Y. About ten days prior to the decedent's death the widow went to the safe-deposit vault and withdrew the entire amount of cash deposited therein in the sum of \$42,500.00. Testimony adduced at the hearing indicated that the decedent maintained personal checking accounts in three banks with an average balance of about \$138,000.00 in each, drawing no interest.

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As a result of field audit examination conducted by the Income Tax Bureau based upon an analysis of books, records and other information made available, it was determined that the cash found in the safe-deposit vault represented additional income not previously reported by the decedent taxpayer and was applied to the years 1955, 1956 and 1957 as follows: \$18,000.00 to each of the years 1955 and 1956, and the balance of \$6,500.00 to the year 1957.

The co-executrix, Agnes Hillman, submitted an affidavit to the Surrogate's Court, Kings County, in which she stated that, "Upon information and belief, the cash value found in the safe-deposit box came from the sale of stock in Dahlquist Company and subsidiaries in 1947". To bolster such contention the representatives for the decedent taxpayer submitted a copy of New York State income tax return of the decedent taxpayer for the year 1947 in which he reported a capital gain in the sum of \$150,000.00 resulting from the sale of his stock interest in Dahlquist Company and its subsidiaries. However, no proof or corroboration was submitted to indicate that the checks received from said sale were actually cashed and the cash actually deposited in the safe-deposit box. The representatives for the taxpayer contend that they were unable to furnish corroborative proof because of the lapse of time.

The officer of the Chase Manhattan Bank testified that from 1943 until the date of his death, the decedent had made anonymous contributions in cash to a fund to be established with a hospital which aggregated the sum of \$54,000.00; that during the period from 1943 to 1947, the decedent taxpayer made cash withdrawals by check from his business and personal checking accounts aggregating the sum of \$100,000.00; that after making such cash withdrawals, the decedent would go down to the safe-deposit box inferring that such cash was deposited in the vault. There was also testimony to the effect that the decedent taxpayer and his wife lived very frugally; that the average income of the taxpayer and his wife from 1943 until May, 1957, was more than \$75,000.00 a year. It appears that the cash contributions were taken from the business and reported as such on the decedent taxpayer's income tax returns.

Although much ado is made of the fact that the Internal Revenue Service accepted the final returns of the decedent taxpayer for the year 1957 without any change, it appears from the testimony of the accountant that the Internal Revenue Service was only supplied with negative evidence (Minutes of Hearing, pp. 38 & 39) and probably was not aware of all the facts in the case.

The attorney for the decedent taxpayer has cited the case of George Overbeck, 14 T.C.M. 967. This case has no application to the instant case since it is based upon an allegation of fraud, where the burden is upon the Federal authorities to prove such fraud. Fraud is not involved in the instant case and the burden of proof is upon the taxpayer.

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Although the large income of the decedent taxpayer would normally be consistent with a withdrawal of \$42,500.00 and placed in a safe-deposit box, this is not the case here. The representatives for the taxpayer contend that the \$42,500.00 found in the safe-deposit box represents the residue on the gain on the sale of the decedent taxpayer's stock in 1947; that the reason for the deposit of said monies in the safe-deposit box was the fact that the decedent had been embarrassed by the bank closing in 1933 and that he was determined to avoid any such situation in the future by keeping cash available in the event any similar condition occurred.

I place no credence upon the contention of the representatives for the decedent taxpayer as to the explanation offered by them in the light of the testimony adduced at the hearing. It is claimed that the decedent taxpayer deposited \$150,000.00 in cash in a safe-deposit box because he didn't trust the banks yet at the same time maintained three or four bank accounts with an average balance of over \$130,000.00 in each drawing no interest. No satisfactory explanation has been offered with respect to the depletion of this \$150,000.00 or how the monies were accounted for resulting in a balance of \$42,500.00 in the safe-deposit box shortly before the decedent's death. In addition, the officer of the Chase Manhattan Bank testified that during the years 1943 through 1947 the decedent was wont to cash checks in large amounts on one of his checking accounts and that on numerous occasions after cashing such checks he would go down to the safe-deposit box in the bank so that it may be inferred that the decedent deposited such cash in the vault; that such withdrawals over a period of approximately four years amounted to over \$100,000.00. Assuming that the anonymous contributions amounted to \$54,000.00 and were taken from the safe-deposit vault, it would, therefore, appear that the amount in the safe-deposit box at the time of decedent's death, if the contentions of the representatives for the taxpayers are to be believed, should have amounted to \$446,000.00. This is incredible. Moreover, the audit indicated that upon an analysis of books, records and other information made available, that the cash found in the safe-deposit vault represented additional business income not previously reported by the decedent taxpayer.

For the reasons stated above, I recommend that the determination of the Tax Commission in the above matter be substantially in the form submitted herewith.

MAR 11 1966

Martin Schapiro

Approved

Paul Hillman

Approved

Solomon Liss

Hearing Officer

STATE OF NEW YORK
STATE TAX COMMISSION

IN THE MATTER OF THE APPLICATION

OF

AGNES HILLMAN, EXECUTRIX OF THE ESTATE OF
HILDEMAR M. HILLMAN, DECEASED

FOR REVISION OR REFUND OF PERSONAL INCOME
TAXES UNDER ARTICLE 16, AND UNINCORPORATED
BUSINESS TAXES UNDER ARTICLE 16-A OF THE
TAX LAW FOR THE YEARS 1955, 1956 AND 1957.

Agnes Hillman, Executrix of the Estate of Hildemar Hillman, having filed applications for revision or refund of additional personal income taxes under Article 16 and unincorporated business taxes under Article 16-A of the Tax Law for the years 1955, 1956 and 1957, made against the decedent taxpayer, H.M. Hillman, and a hearing having been held in connection therewith at the office of the State Tax Commission at 80 Centre Street, New York, N.Y. on the 16th day of November, 1964, before Solomon Sies, Hearing Officer of the Department of Taxation and Finance at which hearing the taxpayer was represented by Warner and Birdsell, P.C., by James Z. Birdsell, Esq., Of Counsel, testimony having been taken and the matter having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That the decedent taxpayer, Hildemar M. Hillman, filed personal and unincorporated business tax returns for the years 1955 and 1956; that a final return for the period from January 1st to May 10, 1957 was filed on behalf of the decedent, H.M. Hillman, by the Chase Manhattan Bank, co-executor of his estate; that the decedent taxpayer died on May 10, 1957.

(2) That prior to his death, the decedent, Hildemar M. Hillman, maintained a safe-deposit box at the Chase Manhattan Bank at 25 Broadway, New York, N.Y. in his own name; that prior to his death the decedent, Hildemar M. Hillman, was confined to a hospital as a result of an automobile accident; that about ten days prior to the date of the death of the decedent, Hildemar M. Hillman, his widow, Agnes Hillman, withdrew from the safe-deposit box at Chase Manhattan Bank the entire proceeds of cash contained therein in the sum of \$42,500.00; that on August 26, 1960, the

Department of Taxation and Finance made additional assessments of personal and unincorporated business taxes against the decedent taxpayer, Hildemar M. Hillman, for the years 1955, 1956 and 1957 (Assessment Nos. FA-87747, FA-87748 and FA-87749, respectively) to include as additional income a portion of unsubstantiated funds in safe-deposit box in the sum of \$18,000.00 for each of the years 1955 and 1956 and the sum of \$6,500.00 for the year 1957 on the basis of a field audit examination.

(3) That the executrix Agnes Hillman submitted an affidavit to the Surrogate's Court, Kings County, in which she stated that: "Upon information and belief, the cash value found in the safe-deposit box came from the sale of stock in Dahlquist Company and its subsidiaries in 1947"; that the taxpayer's representative submitted at the hearing a copy of the New York State income tax return of the decedent taxpayer for the year 1947 in which he reported a capital gain in the sum of \$150,000.00 resulting from the sale of a stock interest in Dahlquist Company and its subsidiaries; that the representatives of the taxpayer were unable to submit proof of the checks received from said transaction or to submit proof that the checks were actually cashed and actually deposited in the safe-deposit box of the decedent taxpayer due to great lapse of time.

(4) That the decedent taxpayer maintained three personal checking accounts in three banks in the City of New York; that at the time of his death the decedent taxpayer had on deposit the following: Chemical Corn Exchange Bank & Trust Company - \$48,317.00; Manufacturers Trust Company - \$36,276.25; Bank of New York - \$54,680.84; that for at least five years prior to the decedent taxpayer's death he maintained these three bank accounts in approximately the aforementioned balances, which bank accounts did not pay any interest thereon; that it is contended that the reason for the deposits of cash in the safe-deposit vault was the decedent taxpayer had been greatly embarrassed by the bank closing in 1933 and was determined to avoid any such situation by keeping cash available in the safe-deposit box; that from 1943 until the date of his death the decedent had made anonymous contributions in cash to a fund to be established for a hospital which aggregated the sum of \$54,000.00; that the cash contributions were taken from the business and reported as such on the decedent taxpayer's income tax return; that during the period from 1943 to 1947 the

decedent taxpayer made cash withdrawals by check from his business and personal checking accounts aggregating the sum of about \$100,000.00; that after making such cash withdrawals the decedent would go down to the safe-deposit vault, inferring that such additional cash was deposited in the safe-deposit box of the decedent taxpayer and that he continued to make additional deposits of cash in said box up to the time of his death.

(5) That the representatives for the decedent taxpayer have failed to establish that the cash in the safe-deposit box represented the proceeds from the sale of the decedent taxpayer's interest in the Dahlquist Company stock as set forth in Finding (3) above; that the contentions of the representatives for the decedent taxpayer are not supported by the credible evidence adduced at the hearing; that no satisfactory explanation was offered with respect to the depletion of the \$150,000.00 in cash claimed to have been deposited in the safe-deposit box in 1947; that it would appear from the testimony adduced at the hearing that the contentions of the representatives for said decedent taxpayer that the latter not only deposited in the safe-deposit box \$150,000.00 but made additional cash deposits in said safe-deposit box [REDACTED] his death the amount of cash in said safe-deposit [REDACTED] box totaled to approximately \$446,000.00; that the audit [REDACTED] upon an analysis of books, records and other information made available, the cash in the sum of \$42,500.00 withdrawn from the safe-deposit vault represented additional business income not previously reported by the decedent taxpayer.

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

DETERMINES:

(A) That the unsubstantiated funds in the safe-deposit box in the sum of \$42,500.00 constituted additional personal and unincorporated business tax income of the decedent taxpayer for the years 1955, 1956 and 1957; that the same was properly prorated and attributable as follows: \$18,000.00 to each of the years 1955 and 1956 and \$6,500.00 to the year 1957.

(B) That, accordingly, the additional normal and business income taxes assessed under Articles 16 and 16-A of the Tax Law for the years

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1955, 1956 and 1957 (Assessment Nos. FA-87747, FA-87748 and FA-87749, respectively) are correct; that said assessments do not include any tax or other charge which could not have been lawfully demanded and that the applications for revision or refund with respect thereto be and the same are hereby denied.

DATED: Albany, New York, on the 2 day of May, 1966.

STATE TAX COMMISSION

James D. Murphy

President

Richard S. ...

Commissioner

James D. Murphy

Commissioner