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MEMORANDUM

*Income Tax Determinations**A-2**Krueger, Frederick**(Est. of)*

TO: **Commissioners Murphy, Palestin & Macduff**

FROM: **Solomon Sies, Hearing Officer**

SUBJECT: **HELEN KRUEGER, as Executrix of the Estate
of FREDERICK KRUEGER, Deceased**

**Petition for Redetermination of a Deficiency
or for Refund of Personal Income Taxes under
Article 22 of the Tax Law for the years 1960,
1961 and 1962, and Unincorporated Business
Taxes under Article 23 of the Tax Law for the
Year 1962.**

File #2-8232931

**A hearing with reference to the above matter was held before
me on January 4, 1965. The appearances and the evidence produced were
as shown in the stenographic minutes and exhibits submitted herewith.**

**The issue involved herein is whether certain monies found
in the safe-deposit vault of the decedent taxpayer subsequent to his
death constitute additional taxable income under Article 22 of the
Tax Law for the years 1960, 1961 and 1962 and additional unincorporated
business taxes for the year 1962 based upon a field audit conducted
by the Income Tax Bureau.**

**The decedent taxpayer, Frederick Krueger, during the years
in issue and prior thereto, was engaged in the real estate and in-
surance business in the town of Huntington, New York up to the time
of his death on March 25, 1963. The decedent taxpayer was both a
licensed real estate broker and a licensed insurance broker. In ad-
dition thereto, the decedent taxpayer was also a business broker en-
gaged in the sale of various businesses such as groceries, hardware
stores, but more particularly in the sale of bars, grills, and liquor
stores on a fee or commission basis. He was also a partner in a beer
distributing business which imported and sold beer. He was also en-
gaged in land development and in the purchasing and selling of real
estate for his own account. At the time of his death, and prior there-
to, the decedent taxpayer maintained a safe-deposit box in the Meadow-
brook National Bank at Huntington Station, L.I., New York. At the
time of his death there was found in the safe-deposit box the sum of
\$21,750.00.**

**The decedent, Frederick Krueger, and his wife Helen Krueger,
filed combined New York State income tax returns for the years 1960,
1961 and 1962. Unincorporated business tax returns were filed by the
decedent for the years 1961 and 1962 but no unincorporated business
tax was paid since the net profit reported was less than the \$5,000.00
statutory exemption. At the time of the decedent's death he left an**

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estate valued at approximately \$600,000.00 which consisted of 23 savings bank accounts amounting to about \$238,000.00, real estate appraised at approximately \$239,000.00 and other assets consisting of securities. The savings bank accounts, the safe-deposit box and the real estate were owned solely in the name of the decedent, Frederick Krueger. Helen Krueger assisted her husband in his business as bookkeeper and secretary, for which she received no salary.

It is contended that the monies in the safe-deposit box represented savings from the drawings of the businesses of the decedent taxpayer Frederick Krueger. The explanation given for the cash in the safe-deposit box is that the decedent taxpayer had been "through the 'crash'--the depression. He liked to have cash on hand. He did not get interest on this. He knew this. But he still wanted this in cash." (Minutes of Hearing, page 37). A field audit was made by the Income Tax Bureau and as a result thereof it was determined that the income from the business was insufficient to account for the cash in the safe-deposit box and, therefore, constituted additional income spread over the last three years prior to the decedent's death, to wit, 1960, 1961 and 1962.

Although the taxpayer Helen Krueger testified that she was familiar with the business transactions and the income of her decedent husband, her testimony with respect to the financial transactions of the taxpayer and the amount of monies deposited in the safe-deposit box was very vague, indefinite and nebulous. It was necessary for her to refer to prepared statements of her representatives when questioned as to details of income and expenses. The Senior Tax Examiner who made the field audit testified that from his examination of the books and records of the various businesses and activities of the decedent taxpayer, using the last three years prior to his death as a sampling, such records failed to disclose sufficient income from the various businesses and activities of the decedent taxpayer which could reasonably account for the monies in the safe-deposit box as accumulated savings.

I am of the opinion that the taxpayer has failed to establish that the monies found in the safe-deposit box actually represented cash savings but did in fact represent and constitute additional income for the years involved. I place no credence on the statements of the widow that these were accumulated savings, especially since she testified that all of the deposits in the safe-deposit vault represented checks issued and cashed from the business accounts and that the cash was not taken from the savings accounts. It is to be noted that the monies in the savings accounts were attributable from the various businesses of the taxpayer.

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

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in the form submitted herewith.

MAR 3 - 1966

SOLOMON SIES

Hearing Officer

/s/ M. SCHAPIRO

Approved

/s/ SAUL HECKELMAN

Approved.

SS:tc

**STATE OF NEW YORK
STATE TAX COMMISSION**

IN THE MATTER OF THE PETITION

OF

**HELEN KRUEGER, INDIVIDUALLY AND AS
EXECUTRIX OF THE ESTATE OF FREDERICK
KRUEGER, DECEASED**

**FOR A REDETERMINATION OF A DEFICIENCY OR
FOR REFUND OF PERSONAL INCOME TAXES UNDER
ARTICLE 22 OF THE TAX LAW FOR THE YEARS
1960, 1961 AND 1962, AND UNINCORPORATED
BUSINESS TAXES UNDER ARTICLE 23 OF THE
TAX LAW FOR THE YEAR 1962.**

Helen Krueger, individually and as executrix of the Estate of Frederick Krueger, deceased, having filed a petition for redetermination of a deficiency or for refund of personal income taxes under Article 22 of the Tax Law for the years 1960, 1961 and 1962, and unincorporated business taxes under Article 23 for the year 1962 (File No. 2-8232931) and a hearing having been held in connection therewith on the 4th day of January, 1964, at 80 Centre Street, New York, N.Y., before Solomon Nies, Hearing Officer of the Department of Taxation and Finance at which hearing the taxpayer, Helen Krueger, appeared and was represented by Saloo & Levitt, Esqs., by Eugene J. Levitt, Esq., of Counsel, and Haskin & Haskin, CPA's, by Norman Haskin, CPA, testimony having been taken and the matter having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That during the years 1960, 1961 and 1962 and prior thereto, the decedent taxpayer Frederick Krueger was engaged in the real estate and insurance business in the town of Huntington, New York up to the time of his death on March 25, 1963; that the decedent taxpayer was both a licensed real estate broker and a licensed insurance broker; that in addition thereto, the decedent taxpayer was also a business broker engaged in the sale of various businesses such as groceries, hardware stores, but more particularly in the sale of bars, grills and liquor stores on a fee or commission basis; that in addi-

tion, the decedent taxpayer was a partner in a beer distributing business which imported and sold beer; that in addition to the aforementioned businesses, the decedent taxpayer was engaged in land development and in purchasing and selling of real estate for his own account; that at the time of his death the decedent taxpayer left a gross estate of approximately \$600,000.00 consisting of cash in approximately 23 savings bank accounts totalling approximately \$238,000.00 and real property appraised at approximately \$239,000.00 in addition to other assets consisting of securities; that in addition thereto the decedent taxpayer maintained during his life-time a safe-deposit box in the Mendocino National Bank at Huntington Station, New York; that at the time of his death there was in said safe-deposit box the sum of \$21,750.00 in cash; that the taxpayer Helen Krueger assisted the decedent in his various businesses as bookkeeper and secretary for which she received no salary.

(2) That Frederick Krueger and Helen Krueger, his wife, filed New York State combined income tax returns (Form IT-200) for the years 1960, 1961, showing New York taxable income of Frederick Krueger in the sum of \$31,317.18 and \$1900.00 for Helen Krueger for the year 1960 and \$11,710.27 for Frederick Krueger and \$1900.00 for Helen Krueger for the year 1961; that the decedent taxpayer Frederick Krueger filed a New York State unincorporated business tax return for the year 1961 showing net income of \$4,000.00 but paid no unincorporated business tax in view of the statutory exemption of \$5,000.00; that the taxpayer Helen Krueger filed a combined New York State income tax return for the year 1962 on behalf of her deceased husband Frederick Krueger and herself, showing a New York taxable income in the sum of \$14,149.71 for Frederick Krueger and \$3,662.79 for herself; that in addition, a New York State unincorporated business tax return for the year 1962 was filed on behalf of the decedent taxpayer Frederick Krueger by his accountants, Raskin & Raskin, showing a net income of \$4,200.61 but no tax was paid in view of the statutory exemption of \$5,000.00; that on April 13, 1964, the Department of Taxation and Finance issued a statement of audit charges against the taxpayer Frederick Krueger and Helen Krueger, his wife, attributing 1/3 of the amount of cash in

the safe-deposit box which was considered additional income for the year 1960 in the sum of \$7,290.00; one-third (1/3) of cash found in safe-deposit box considered as additional income for the year 1961 in the sum of \$7,290.00 and one-third (1/3) of amount of cash found in safe-deposit box considered as additional income for the year 1962 in the sum of \$7,290.00; that a recomputation of unincorporated business tax was made including \$7,290.00 as additional income from business; that said adjustments were made after field audit and a notice of deficiency was issued accordingly imposing additional personal income taxes for the years 1960, 1961 and 1962 in the sums of \$650.90, \$679.21 and \$716.90, respectively, and unincorporated business tax in the sum of \$146.12 for the year 1962; that the total amount of the aforementioned taxes with interest computed to April 15, 1964, amounted to \$2,465.71.

(3) That the taxpayer Helen Krueger contends that the amount of cash in the safe-deposit box of her deceased husband Frederick Krueger at the time of his death in the sum of \$21,790.00 represented an accumulation of savings over a period in excess of twenty years; that the same represented savings from the drawings of the decedent from his various businesses and was motivated by a desire to have a certain amount of cash on hand because he had gone through the depression; that she testified that her husband had been "through the 'crash'--the depression. He like to have cash on hand. He did not get interest on this. He knew this. But he still wanted this in cash." (Minutes of Hearing, page 37); that the taxpayer Helen Krueger has failed to establish that the business income of the decedent taxpayer was sufficient to warrant an accumulation of savings as claimed; that although the taxpayer Helen Krueger testified that she was familiar with the business transactions and the income of her decedent husband since she assisted him in said business, her testimony with respect to the financial transactions of the taxpayer and the amount of monies allegedly deposited in the safe-deposit box was very vague, indefinite and uncertain; that it was necessary for her to refer to prepared statements of her representatives when questioned as to details of her income and expenses; that the taxpayer Helen Krueger testified that all of the deposits in the safe-deposit vault represented checks issued and cashed by the decedent from the busi-

ness bank accounts and were not taken from the savings accounts; that the monies on deposit in the savings accounts were all attributable from the various businesses of the decedent taxpayer; that the taxpayer Helen Krueger has failed to establish that the aforementioned cash actually represented an accumulation of savings as claimed and not additional income; that the senior tax examiner who conducted the field audit testified that from his examination of the books and records of the various businesses and activities of the decedent taxpayer, using the last three years prior to his death as a sampling, such records failed to disclose sufficient income from the various businesses and activities of the decedent taxpayer which could reasonably account for the monies in the safe-deposit box as accumulated savings; that the amount of cash represented additional income properly attributable to the various businesses of the taxpayer Frederick Krueger during the years 1960, 1961 and 1962 as more fully set forth in Finding (2) above as a result of field audit conducted by the Department of Taxation and Finance.

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

RECOMMENDS AND DECIDES:

That the cash in the safe-deposit box of the decedent taxpayer in the sum of \$21,790.00 represented additional personal income properly attributable to the taxpayers for the years 1960, 1961 and 1962 and additional unincorporated business taxes in the sum of \$7,290.00 for the year 1962 in accordance with the notice of deficiency issued against the taxpayers for the years 1960, 1961 and 1962; that accordingly the statements of audit changes and the notice of deficiency for the years 1960, 1961 and 1962 are correct; that said notice of deficiency does not include any tax or other charge which could not have been lawfully demanded and that the petition of the taxpayer Helen Krueger, individually and as executrix of the Estate of Frederick Krueger for a redetermination or refund with respect thereto be and the same is hereby dismissed.

DATED: Albany, New York, on the 11th day of May, 1966.

STATE TAX COMMISSION

/s/

JOSEPH H. MURPHY

President

/s/

IRA J. PALESTIN

Commissioner

Joe H. Murphy
Commissioner