

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

SHIRLEY D. BRINSFIELD

For a Redetermination of a Deficiency or  
a Refund of Personal Income  
Taxes under Article(s) 22 of the  
Tax Law for the (Year(s) 1963

AFFIDAVIT OF MAILING  
OF NOTICE OF DECISION  
BY (CERTIFIED) MAIL

*Jacques Paul  
CCH # 99-244*

State of New York  
County of Albany

LYNN PUORTO, being duly sworn, deposes and says that

she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 10th day of March, 1970, she served the within Notice of Decision (or Determination) by (certified) mail upon Shirley D.

Brinsfield (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Shirley D. Brinsfield, 30 Moser Place Old Tappan, New Jersey

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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative of) 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

10th day of March, 1970.

*Janet Wright*

*Lynn Puorto*

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
SHIRLEY D. HINSFIELD :  
For a Redetermination of a Deficiency or :  
a Refund of Personal Income :  
Taxes under Article(s) 22 of the :  
Tax Law for the (Year(s) 1963 :

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AFFIDAVIT OF MAILING  
OF NOTICE OF DECISION  
BY (CERTIFIED) MAIL

State of New York  
County of Albany

LYNN PUORTO , being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 10th day of March , 19 70, she served the within Notice of Decision (or Determination) by (certified) mail upon

Howard Weitz, Esq. (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Howard Weitz, Esq.  
Chrysler Bldg.  
New York, New York 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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative of) 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

10th day of March , 1970

Janet Wright

Lynn Puerto

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition :

of :

SHIRLEY D. BRINSFIELD :

DECISION

For a Redetermination of a deficiency  
or for Refund of Personal Income  
Taxes under Article 22 of the Tax Law  
for the Year 1963 :

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Shirley D. Brinsfield, Esq., has petitioned for a redetermination of a deficiency or for refund of personal income taxes under Article 22 of the Tax Law for the year 1963. A formal hearing was held before Lawrence A. Newman, Hearing Officer, in the offices of the State Tax Commission in the City of New York on November 24, 1969. The petitioner appeared through Howard Weitz, Esq., and the Income Tax Bureau was represented by Edward H. Best, Esq., (Alexander Weiss, Esq., of Counsel).

FINDINGS OF FACT:

1. The petitioner, Shirley D. Brinsfield, did not file a New York State Personal Income Tax return for the year 1963.

2. On July 11, 1966, a Notice of Deficiency was issued by the Income Tax Bureau under file numbered 49,999,301 for the year 1963. The notice contained a statement of tax deficiency in the amount of \$6,690.00, a penalty under Section 685(a) of the Tax Law of 25% or the amount of \$1,672.50, and statutory interest. The deficiency was based upon a finding of the Income Tax Bureau that income of \$75,000.00 from a joint-venture of practising law in New York State constituted New York Income to a non-resident.

3. The petitioner filed a petition for redetermination of the deficiency by mailing it in an envelope addressed to the State Tax Commission, Albany, New York.

The petition was received by the State Tax Commission on October 13, 1966. The envelope containing the petition was postmarked in Rutherford, New Jersey on October 10, 1966.

4. The petition was filed more than ninety days after the mailing of the notice of deficiency.

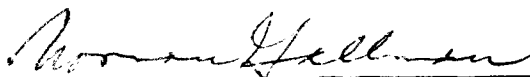
DECISION:

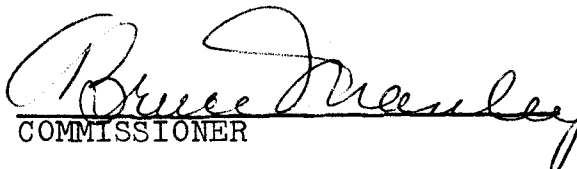
A. The petition of Shirley D. Brinsfield was not timely filed, and is denied.

B. The notice of deficiency for the year 1963 is sustained.

DATED: March 9, 1970 at Albany, New York

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER

BUREAU OF LAW

MEMORANDUM

TO: The State Tax Commission

FROM: Solomon Sies, Hearing Officer

SUBJECT: Birdie Brust, Individually and as  
 Executrix of the Estate of Joseph F.  
 Brust, Deceased

Petition for Redetermination of a  
 Deficiency or for Refund of Personal  
 Income Taxes Under Article 22 of  
 the Tax Law for the Year 1961

The issue involved herein is whether cash found in the safe deposit boxes of decedent taxpayer constitutes additional taxable income.

Joseph F. Brust and Birdie Brust his wife, filed a New York State Combined Income Tax Return (separate returns on one form) for the year 1961 in which they reported Federal adjusted gross income for said year in the amount of \$40,160.31. Joseph F. Brust died on November 1, 1961 and his widow Birdie Brust was thereafter appointed executrix of his estate. The gross amount of the estate was approximately \$608,000.00.

Prior to his death, the decedent and his wife, as tenants in common, maintained two safe deposit boxes, one in the Chase Manhattan Bank in Brooklyn and the other at Security National Bank in Seaford, New York. At the time of the decedent's death there was discovered in the safe deposit box in the Chase Manhattan Bank, United States currency amounting to \$29,468.00. There was also discovered in the Security National Bank in Seaford, United States currency amounting to \$1,043.00. All of the cash with the exception of \$1,603.00 was discovered in certain wrappers, most of which bore certain dates. The wife never accompanied the decedent on his visits to the safe deposit vaults. The examiner's report indicated cash with wrappers as follows:

|          |            |            |             |
|----------|------------|------------|-------------|
| 7/24/40  | \$2,000.00 | 6/25/46    | \$ 500.00   |
| 12/13/41 | 1,000.00   | 6/25/46    | 500.00      |
| 4/23/45  | 500.00     | 2/3/48     | 1,000.00    |
| 4/25/45  | 500.00     | 2/5/48     | 1,000.00    |
| 12/20/45 | 500.00     | 10/49      | 1,000.00    |
| 1/24/46  | 500.00     | Total      | \$10,500.00 |
| 2/1/46   | 500.00     | 12/30/60   | 1,298.00    |
| 2/2/46   | 1,000.00   | No Date    | 17,110.00   |
|          |            | No Wrapper | 1,603.00    |
|          |            | Total Cash | \$30,511.00 |

On April 13, 1965, a statement of audit changes and notice of deficiency were issued against the taxpayer for the year 1961 imposing additional tax in the amount of \$3,670.35, including interest, on the ground that the cash in the vaults constituted additional taxable income "due to insufficient explanation." The statement of audit changes also included a portion of unsubstantiated contributions in the amount of \$600.00, which is not being contested. On August 2, 1965, the Department of Taxation & Finance issued to the taxpayer a notice of demand for payment of tax due for 1961 in the amount of \$3,670.35 plus additional interest of \$56.59 for a total of \$3,726.94. On August 25, 1965, the taxpayer filed a timely claim for refund of said amount which was denied. Thereafter the taxpayer filed a timely petition for redetermination of a deficiency or for refund of personal income taxes for 1961.

Prior to his death, the decedent taxpayer was an executive officer and 80% shareholder of the stock of Brust Bros. Inc., a domestic corporation organized under the Laws of the State of New York, engaged in the business of electro-plating. The decedent taxpayer received a salary from said corporation in excess of \$20,000.00 a year. He also received dividends from the corporation averaging between \$7,500.00 and \$10,000.00 a year.

The taxpayer testified that she and her deceased husband, prior to the latter's death, were living in a 2-1/2 room furnished apartment at rental of \$115.00 per month. (Min. of Hrg., pp. 55 and 56). In her affidavit (Exhibit I), the taxpayer stated that the decedent paid all the bills and gave her \$50.00 per week for household expenses; that they owned a small bungalow in Seaford, New York, where they spent their summers; that they rarely traveled or took a vacation; that they did very little entertaining and rarely dined out; that the decedent never owned any stocks or other securities other than his stock interest in the corporate business; that it was not until 1958 that the decedent purchased U.S. Treasury notes and made small loans secured by real estate mortgages; that the decedent deposited most of his earnings in his checking or savings accounts; that the decedent mentioned several times his desire to accumulate extra money to pay inheritance taxes and cover emergencies that might arise. Both the taxpayer and the Attorney for the Estate testified that the cash in the safe deposit boxes consisted of old bills.

The accountant for Brust Bros. Inc., who was also the accountant for the decedent taxpayer testified that the corporation maintained a monthly average cash balance in its business checking account of between \$125,000.00 to \$150,000.00 prior to 1953 and that the decedent taxpayer maintained a monthly average cash balance in his personal checking account of about \$30,000.00 to \$40,000.00 prior to 1955. The balance of cash in the above mentioned checking accounts did not bear any interest. These amounts were far in excess of the needs of the corporation and decedent taxpayer. The accountant advised the decedent taxpayer to put this excess cash to use so that

he would receive additional income therefrom. A schedule was submitted showing deposits in savings bank accounts of the decedent taxpayer totalling \$48,000.00 for the period from 1952 to 1961. The same schedule also shows deposits in savings bank accounts of the decedent from 1941 through 1952 totalling approximately \$28,000.00. The taxpayer contends that most of the cash found in the safe deposit boxes was placed there prior to 1953; that the aforementioned cash found in the safe deposit boxes represented an accumulation of savings from income on which tax had already been paid.

In the case of Hillman v. State Tax Commission, 30 A D 2d 362, the executrix, ten days prior to the decedent's death, withdrew from his safe deposit box the amount of \$42,500.00 in United States currency. The decedent left an estate of over \$1,000,00.00. The executrix submitted an affidavit as to the possible source of the cash in the safe deposit box. She stated that the decedent sold certain stock in 1947 which was reflected in his tax return for said year in a capital gain of \$150,000.00. The accountant for the decedent testified that in 1954 the decedent told him that he had a substantial amount of cash in a vault arising from the sale of this stock. An officer of the Chase Manhattan Bank testified that the decedent frequently cashed checks from his personal and business accounts and would go directly to the vault. It was determined by the Tax Commission that the cash in the safe deposit box constituted additional income on the basis that no satisfactory explanation was given as to the depletion of the \$150,000.00 claimed to have been placed in the safe deposit box; that the executrix failed to produce proof of the checks received from the sale of the stock or to submit proof that they were actually cashed; that if the testimony of the bank officer was to be given credence, there should have been in the decedent's vault, at the time of his death, an amount in excess of \$300,000.00. The Court held that the determination was erroneous and arbitrary; that there was no evidence of any source of income received by the decedent except from his legitimate business activities; that his books and records were not challenged; that the petitioner had satisfactorily explained the presence of the cash in the safe deposit box.

In the instant case, the books, records and returns of the decedent taxpayer were not challenged. The taxpayer and her late husband had no children and lived frugally. It appears likely, from the evidence adduced at the hearing, that the decedent could very well have accumulated savings of \$30,000.00 over a 20 year period. The mere presence of cash in the safe deposit boxes does not give rise to an inference that said cash constitutes taxable income.

I am of the opinion that the taxpayer has satisfactorily and fully explained the presence of the cash in the safe deposit boxes as an accumulation of savings and that said cash did not constitute additional taxable income for 1961.

Accordingly, the notice of deficiency and statement of audit changes, except for the disallowance of a portion of unsubstantiated contributions, were improper. The taxpayer is entitled to a refund of \$3,666.94 (\$3,726.94, additional tax paid less \$60.00, tax on unsubstantiated portion of contributions of \$600.00).

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

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SOLOMON SIES  
Hearing Officer

SS:cg

December 12, 1969



STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition of

BIRDIE BRUST, Individually  
and as Executrix of the  
Estate of JOSEPH F. BRUST,  
Deceased,

DECISION

For Redetermination of a Deficiency or  
For Refund of Personal Income Taxes Under  
Article 22 of the Tax Law for the Year 1961  
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Birdie Brust, Individually and as Executrix of the Estate of Joseph F. Brust, 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 year 1961 and a hearing having been held in connection therewith at the office of the State Tax Commission at 80 Centre Street, New York, New York, on the 27th day of January, 1969, before Solomon Sies, Hearing Officer, at which hearing the taxpayer was represented by Kohn, Bookstein & Karp, Esqs., by Eugene M. Karp, Esq., of Counsel and Mary P. Mass, Esq., testimony having been taken and the matter having been duly examined and considered,

The State Tax Commission hereby finds:

(1) Joseph F. Brust and Birdie Brust, his wife filed a New York State combined Income Tax return (Form IT-208) for the year 1961. The decedent taxpayer, Joseph F. Brust, reported on said return wages in the amount of \$22,800.00 less sick pay excluded therefrom in the amount of \$600.00. In addition, the aforesaid taxpayer also reported dividends, interest, rent, etc., in the amount of \$14,672.79. The wife reported dividend and interest income in the amount of \$3,287.52. The adjusted gross income of the taxpayers as reported on their Federal Income Tax return for said year amounted to \$40,160.31.

(2) Joseph F. Brust died on November 1, 1961. His widow, Birdie Brust, was duly appointed Executrix of his Estate. The gross amount of the Estate of the decedent taxpayer amounted to about \$608,000.00.

Prior to his death, the decedent and his wife, as tenants in common, maintained two safe deposit boxes, one in the Chase Manhattan Bank in Brooklyn and the other at Security National Bank in Seaford, New York. At the time of the decedent's death there was discovered in the safe deposit box in the Chase Manhattan Bank, United States currency amounting to \$29,468.00. There was also discovered in the Security National Bank in Seaford, United States currency amounting to \$1,043.00. All of the cash with the exception of \$1,603.00 was discovered in certain wrappers, most of which bore certain dates, namely, 1940, 1941, 1945, 1946, 1948, 1949 and 1960.

(3) On April 13, 1965, a statement of audit changes and notice of deficiency were issued against the taxpayer for the year 1961 imposing additional tax in the amount of \$3,670.35, including interest, on the ground that the cash in the safe deposit boxes constituted additional taxable income "due to insufficient explanation." The taxpayer paid the deficiency plus additional interest of \$56.59 and filed a timely application for refund in the amount of \$3,726.94 which was denied. The taxpayer thereafter filed a timely petition for redetermination of a deficiency or for refund of personal income taxes for 1961. The statement of audit changes also disallowed a portion of contributions as unsubstantiated in the amount of \$600.00. The taxpayer is not contesting this item.

(4) Prior to his death, the decedent taxpayer was an executive officer and 80% shareholder of the stock of Brust Bros. Inc., a domestic corporation organized under the Laws of the State

of New York, engaged in the business of electro-plating. The decedent taxpayer received a salary from said corporation in excess of \$20,000.00 a year. He also received dividends from the corporation averaging between \$7,500.00 and \$10,000.00 a year.

(5) The taxpayer testified that she and her deceased husband, prior to the latter's death, were living in a 2-1/2 room furnished apartment at rental of \$115.00 per month. (Min. of Hrg., pp. 55 and 56). In her affidavit (Exhibit I), the taxpayer stated that the decedent paid all the bills and gave her \$50.00 per week for household expenses; that they owned a small bungalow in Seaford, New York, where they spent their summers; that they rarely traveled or took a vacation; that they did very little entertaining and rarely dined out; that the decedent never owned any stocks or other securities other than his stock interest in the corporate business; that it was not until 1958 that the decedent purchased U. S. Treasury notes and made small loans secured by real estate mortgages; that the decedent deposited most of his earnings in his checking or savings accounts; that the decedent mentioned several times his desire to accumulate extra money to pay inheritance taxes and cover emergencies that might arise. Both the taxpayer and the Attorney for the Estate testified that the cash in the safe deposit boxes consisted of old bills.

(6) The accountant for Brust Bros. Inc., who was also the accountant for the decedent taxpayer testified that the corporation maintained a monthly average cash balance in its business checking account of between \$125,000.00 to \$150,000.00 prior to 1953 and that the decedent taxpayer maintained a monthly average cash balance in his personal checking account of about \$30,000.00 to \$40,000.00 prior to 1955. The balance of cash in the above mentioned checking accounts did not bear any interest. These amounts were far in excess of the needs of the corporation and decedent taxpayer. The accountant advised the decedent taxpayer to put this excess cash to use so that he would receive additional income therefrom. A schedule was

submitted showing deposits in savings bank accounts of the decedent taxpayer totalling \$48,000.00 for the period from 1952 to 1961. The same schedule also shows deposits in savings bank accounts of the decedent from 1941 through 1952 totalling approximately \$28,000.00.

(7) The books, records and returns of the decedent taxpayer were not challenged. The decedent taxpayer could very well have accumulated savings in excess of \$30,000.00 over a 20 year period based upon his earnings and mode of living. The taxpayer has fully and satisfactorily explained the presence of the cash in the safe deposit boxes as an accumulation of savings over a twenty year period.

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


DECIDES:

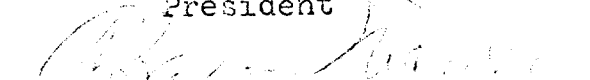
(A) The cash in the safe deposit boxes amounting to \$30,511.00 did not constitute additional income of the decedent taxpayer for the year 1961 but rather an accumulation of savings over a twenty year period.

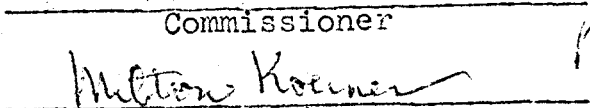
(B) Accordingly, the notice of deficiency and statement of audit changes, except for the disallowance of a portion of unsubstantiated contributions, were improper. The taxpayer's petition for redetermination of a deficiency or for refund of personal income taxes for the year 1961, except as stated above, is hereby granted. There shall be refunded to the taxpayer the amount of \$3,666.94 (\$3,726.94, additional tax paid less \$60.00, tax on unsubstantiated contributions of \$600.00) together with any lawful interest that may be due thereon.

Dated, Albany, New York the 9th day of March , 1970

STATE TAX COMMISSION

  
\_\_\_\_\_  
President

  
\_\_\_\_\_  
Commissioner

  
\_\_\_\_\_  
Commissioner