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PHOTO MICROGRAPHICS INC.

Personal Income
16 374

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Application :
of the :
ESTATE OF PHILIP DWORSKY : **DETERMINATION**
For Redetermination of a Deficiency or :
for Refund of Personal Income Taxes :
Under Article 16 of the Tax Law for the :
Years 1956 and 1957 :

The executor of the Estate of Philip Dworsky, having filed an application pursuant to Tax Law, Section 374, for revision of personal income tax imposed by Article 16 of the Tax Law for the years 1956 and 1957 under notices of additional assessment issued under date of January 20, 1960 and such application having been denied and a hearing thereon having been scheduled and held before Nigel G. Wright, Hearing Officer, and the record thereof having been duly examined and considered,

The State Tax Commission hereby

FINDS:

(1) The issues in this case are whether certain liquidating distributions from the Gladfil Company, Inc., are capital or ordinary in character and, further, whether the decedent taxpayer had disposed of his stock in such corporation before the taxable years in question with the result that he did not receive the distributions in question.

(2) The decedent was the owner of record of a 25% interest in the stock of Gladfil Company, Inc., during the taxable years in question.

(3) The record ownership of the Gladfil Company, Inc., at the time of its inception, or shortly thereafter, was 50% in the Gladstone family and 50% in Philip Dworsky, the decedent. One half of Philip Dworsky's interest was, from the inception of the corporation, or shortly thereafter, beneficially owned by his

brother, Moses Dworsky, who was his partner in many business enterprises. Sometime prior to 1947 the record ownership of the 25% interest owned beneficially by Moses Dworsky was transferred to the name of Moses Dworsky.

(4) No interest in the Gladfil Company, Inc., nor in the real estate distributed in liquidation of said corporation, appeared in or passed through the estate of Philip Dworsky or appeared in the estate tax return of his estate upon his death. Although Philip Dworsky died subsequent to the taxable years here in question, no assignment has been shown subsequent to the taxable years in question.

(5) On November 7, 1947, Philip Dworsky beneficially assigned to his daughter, Miriam Obler, a 12 1/2% interest in the corporation.

(6) Miriam Obler reported income from the Gladfil Company, Inc., on her 1947 New York personal income tax return.

(7) Letters dated September 5, 1941, December 3, 1941, and March 3, 1944, show that Philip Dworsky paid his son, Raymond, the amounts received on distributions from Gladfil Company, Inc. and advised him to include the income portion thereof in his tax returns.

Upon the foregoing findings and all the evidence in the case,

The State Tax Commission hereby

DETERMINES:

(A) The taxpayer has carried the burden of proof that the decedent held no beneficial interest in the Gladfil Company, Inc., and accordingly no amounts received therefrom are taxable to this taxpayer.

