

*Gardiner, Edna Mae*  
*P.I.*  
*16*

STATE OF NEW YORK  
STATE TAX COMMISSION

\_\_\_\_\_  
In the Matter of the Petition  
:  
of  
:  
EDNA MAE GARDINER  
:  
For a Redetermination of a Deficiency or  
a Refund of Personal Income  
Taxes under Article(s) 16 of the  
Tax Law for the (Year(s) 1956 :  
\_\_\_\_\_

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

State of New York  
County of Albany

Linda Wilson , 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 19th day of January , 1971, she served the within Notice of Decision (or Determination) by (certified) mail upon EDNA MAE GARDINER (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mrs. Edna Mae Gardiner  
2 Fifth Avenue  
New York, New York  
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  
19th day of January , 1971.

*Keith Funes*  
*Linda Wilson*

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition  
of  
EDNA MAE GARDINER  
For a Redetermination of a Deficiency or  
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2245 East 19th Street  
Brooklyn, New York  
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

19th day of January, 1971

Maitha Suarez

Linda Wilson

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Application :  
of :  
EDNA MAE GARDINER : DETERMINATION  
for Revision or Refund of Personal :  
Income Taxes under Article 16 of :  
the Tax Law for the Year 1956 :  
:

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The taxpayer, Edna Mae Gardiner, having filed an application for revision of personal income taxes for the year 1956 and a hearing having been held at the office of the State Tax Commission, 80 Centre Street, New York, New York on the 16th day of May, 1967 and the record having been duly examined and considered,

The State Tax Commission hereby

FINDS:

1. The issue in this case is whether the income of an estate is properly payable to a life beneficiary in the year of termination of the estate so as to subject the life beneficiary to tax.
2. The assessment amounts to \$362.54.
3. Albert M. Gardiner, taxpayer's late husband, died on September 22, 1955. He left a will which created two trusts each of which the taxpayer was the life beneficiary with power in the trustee to invade corpus to assure her an annual income of \$7,500.
4. The trusts were set up at the end of 1956 by transfer of assets from the estate. All cash on hand was transferred with the other assets and placed in the corpus of the trusts. Each trust had income after such transfer of \$405.81 on these assets and distributed such income to Mrs. Gardiner. Mrs. Gardiner declared such sums on her tax return.
5. The estate of Albert M. Gardiner declared income of \$5,722.26 in net income, all from dividends and interest, and also declared \$383.26 in net capital gain, on securities which had been sold for a

total price of \$28,329.30. These amounts were earned prior to the transfer of assets to the trusts. The estate was declared terminated as of December 31, 1956 but no deduction was taken for distributions to beneficiaries.

6. It does not appear that the estate made any actual distribution to Mrs. Gardiner.

7. The assessment finds that the estate had income of \$5,722.26, plus \$283.09, originally reported as capital gain, for a total of \$6,005.35, and had capital gain of \$100.17. The normal income is deemed distributed one-half (\$3,002.67) to each testamentary trust and added to the \$405.81 reported to arrive at a total of \$3,408.48 for each trust. These amounts were then deemed distributed to Mrs. Gardiner as of December 31, 1956.

Upon the foregoing findings and all the evidence in the case  
The State Tax Commission hereby

DETERMINES:

A. Under Personal Property Law 17(b) (now Estates, Powers and Trusts Law 11-2.1(d)) and the terms of the testamentary trust the income of the estate was payable either directly or indirectly to Mrs. Gardiner at or before the termination of the estate. Under Tax Law Section 365 subd. 4 these amounts were taxable to Mrs. Gardiner.

B. The assessment does not contain any amount which could not have been lawfully demanded.

C. The application is denied and the assessment is affirmed together with such interest and other charges, if any, as may be due under Section 376 and 377 of the Tax Law.

DATED: Albany, New York

*January 18, 1971*

STATE TAX COMMISSION

*Thomas Galbraith*  
\_\_\_\_\_  
COMMISSIONER

*Bruce Newley*  
\_\_\_\_\_  
COMMISSIONER

*Milton Kaerner*  
\_\_\_\_\_  
COMMISSIONER

STATE OF NEW YORK  
Department of Taxation and Finance  
STATE CAMPUS  
ALBANY, N. Y. 12226

**FORWARDED**

Mrs. Edna Mae Gardiner

2 Fifth Avenue

New York, New York



- Moved, left no address
- No service number
- No. of service number
- Addressed unknown

NEW YORK, N.Y.

*Handwritten notes:*  
Not to report  
[Signature]



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE  
BUILDING 9, ROOM 214A  
STATE CAMPUS  
ALBANY, N. Y. 12226

STATE TAX COMMISSION

NORMAN F. GALLMAN, ACTING PRESIDENT  
A. BRUCE MANLEY  
MILTON KOERNER

AREA CODE 518  
457-2655, 6, 7

STATE TAX COMMISSION  
HEARING UNIT

EDWARD ROOK  
SECRETARY TO  
COMMISSION

ADDRESS YOUR REPLY TO

Albany, New York

January 19, 1971

Mrs. Edna Mae Gardiner  
2 Fifth Avenue  
New York, New York

Please take notice of the DETERMINATION of  
the State Tax Commission enclosed herewith.

Please take further notice that pursuant to Section 375  
the Tax Law any proceeding in court to review an adverse decision  
must be commenced within 90 days after  
the date of this notice.

Any inquiries concerning the computation of tax due or refund allowed  
in accordance with this decision or concerning any other matter relat-  
ing hereto may be addressed to the undersigned. These will be referred  
to the proper party for reply.

Very truly yours,

Nigel G. Wright  
HEARING OFFICER

cc Petitioner's Representative  
Law Bureau

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Application

of

EDNA MAE GARDINER

DETERMINATION

for Revision or Refund of Personal  
Income Taxes under Article 16 of  
the Tax Law for the Year 1956

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*Norman Gallivan*  
COMMISSIONER

*Bruce Moulton*  
COMMISSIONER

*Milton Kremer*  
COMMISSIONER