

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition  
of  
Henry T. (deceased) & Alice R. Ireys  
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

Martha Funaro , 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 30th day of April , 19 71, she served the within Notice of Decision (or Determination) by (certified) mail upon Henry T. (deceased) & Alice Ireys (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: Mrs. Alice R. Ireys  
45 Willow Street  
Brooklyn, New York 11201

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

30thday of April , 1971

James S. Van Patten

Martha Funaro

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition

of

Henry T. (deceased) & Alice R.  
Ireys

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

Martha Funaro , 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 30th day of April , 1971 , she served the within Notice of Decision (or Determination) by (certified) mail upon Howard A.

Lawrence, 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 A. Lawrence, Esq.

10 Angela Lane  
Bay Shore, L.I., 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

30th day of April , 1971.

*Joyce S. Van Patten*

*Martha Funaro*

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**Edward H. Best**

**Edward Rook**


**Henry T. & Alice Ireys  
Formal Hearing, Year 1963  
Corporate payment to Widow**

The Tax Commission has rendered a decision favorable to the petitioner. This decision is being forwarded to you in due course.

Accordingly, your file which contains material that is not a part of the hearing record, is returned herewith.

It is suggested that the attached cashier's check in the amount of \$316.13, drawn on the Ocean National Bank in favor of the Commission, be returned to the petitioner's representative.

**Enclosure**

  
**Edward Rook  
Secretary to the  
State Tax Commission**

**April 30, 1971**

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
HENRY T. (deceased) and ALICE R. IREYS : 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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Alice R. Ireys filed a timely petition on her own behalf and as executrix of the Estate of Henry T. Ireys, III 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, Esq., Hearing Officer, in the offices of the State Tax Commission in the City of New York on July 11, 1969, and concluded on October 3, 1969. Mrs. Ireys appeared, and was represented by Howard A. Lawrence, Esq.

FINDINGS OF FACT

1. The petitioner filed a joint New York State resident income tax return for the year 1963, individually and as executrix of the estate.

2. On January 18, 1965, the Income Tax Bureau issued a notice of deficiency against the petitioner under file numbered 3-8655053 in the amount of \$446.44 plus statutory interest. The Bureau had determined that a payment of \$12,600 to the surviving spouse by the employer of the deceased was taxable income, after taking into consideration the \$5,000 death benefit exclusion.

3. There is no presumption that payments to a surviving spouse by an employee after death of an employee are or are not taxable income.

Whether a particular payment is in the nature of a gift or taxable income is a question of fact that is reached on a consideration of all the factors in a particular case.

4. In the present case, there was no obligation on the part of the employer to make the payment. The widow performed no services. The corporation received no benefit from the payment, and the employee's services had already been adequately compensated.

There was no established plan followed by the company in making payments to the widows of deceased officers or employees. The widow was never an officer or employee of the payor-company. The payment served no business purpose of the payor, nor was the payment economically beneficial to it.

5. The dominant reason for making the payment was to make a gift to the recipient.

DECISION


A. The payment of \$12,600 to the surviving spouse was in the nature of a gift and not taxable income.

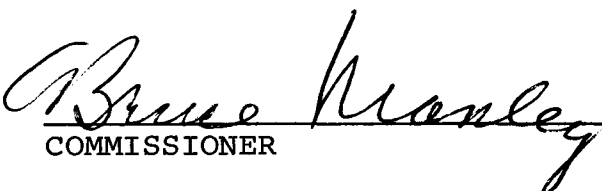
B. The notice of deficiency dated January 18, 1965, is not correct and is cancelled.

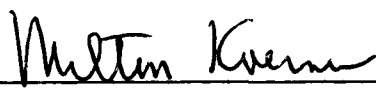
C. The petition is granted.

DATED: Albany, New York  
*April 30, 1971*

STATE TAX COMMISSION

  
COMMISSIONER

  
COMMISSIONER

  
COMMISSIONER