

STATE OF NEW YORK  
STATE TAX COMMISSION

*Petitioner*  
*Personal*  
*Fink Arthur C.*

In the Matter of the Petition

of

ARTHUR C. FINK

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) 1959.

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 8th day of July, 1971, she served the within  
Notice of Decision (or Determination) by (certified) mail upon ARTHUR C.

FINK (representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: Arthur C. Fink  
145 West 79th Street  
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

8th day of July, 1971.

*Linda Wilson*  
*Arthur C. Fink*

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Application :

of :

DETERMINATION

ARTHUR C. FINK :

for Refund of Personal Income Taxes :  
under Article 16 of the Tax Law for  
the Year 1959. :

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Arthur C. Fink filed an application for refund of personal income taxes paid for the year 1959, which was denied; a hearing was held thereon at the office of the State Tax Commission, 80 Centre Street, New York, New York, on October 28, 1964, before Martin Schapiro, Hearing Officer, and the taxpayer personally appeared.

#### ISSUE

I. Are executors' fees constructively received as of the date of the order of the Surrogate fixing such fees?

#### FINDINGS OF FACT

1. The taxpayer filed a New York State resident income tax return for the year 1959, reporting therein income from fees as an executor in the amount of \$39,354.85. Thereafter the taxpayer filed an application for refund alleging that such income should not have been included in his 1959 return but that such income was attributable to the year 1958.

2. The taxpayer and others were executors of the Estate of Aaron C. Horn, deceased; on December 16, 1958 the Surrogate's

Court issued a decree resettling the final accounts of the proceedings of the executors which was entered on December 11, 1958; the latter provided that the executors retain for themselves commissions to which they are entitled out of the balance found and remaining in the hands of said executors.

3. In January 1959 there was distributed to the taxpayer, Arthur C. Fink, the sum of \$39,354.85 as executor's fees; at the time of the entry of the decree resettling the account, all the assets of the estate consisted of cash.

DETERMINATION

A. The doctrine of constructive receipt does not apply to fees of executors where the final decree does not direct payment of such fees at a particular time and the executors in their official capacities have done nothing to credit such fees or set apart such fees to themselves in their individual capacities. Weil v. Commissioner, 173 F.2d 805.

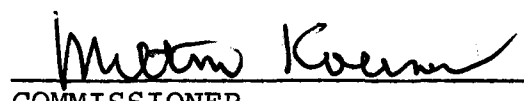
B. The application is denied.

DATED: Albany, New York, on the 8<sup>th</sup> day of July, 1971.

STATE TAX COMMISSION

  
COMMISSIONER

  
COMMISSIONER

  
COMMISSIONER