

STATE OF NEW YORK
STATE TAX COMMISSION

Sealy, Sylvia

In the Matter of the Petition

of

Sylvia Sealy

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) 1962, 1963 & 1964

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 11th day of January, 1971, she served the within
Notice of Decision (or Determination) by (certified) mail upon

Sylvia Sealy (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Morris H. Levine, C.P.A.
One Sunrise Plaza
Valley Stream, New York 11581

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

11th day of January, 1971.

Linda Wilson

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

Sylvia Sealy

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) 1962, 1963 & 1964

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 11th day of January, 1971, she served the within Notice of Decision (or Determination) by (certified) mail upon Sylvia Sealy (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Sylvia Sealy
184-46 Galway Avenue
Hollis, 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

11th day of January, 1971

Linda Wilson

Martha Funaro

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
SYLVIA SEALY	:	DECISION
	:	
for a Redetermination of a Deficiency or for	:	
Refund of Personal Income Taxes under Article	:	
22 of the Tax Law for the years 1962, 1963	:	
and 1964	:	

In the Matter of the Petition	:	
	:	
of	:	
SYLVIA SEALY	:	DECISION
	:	
for a Redetermination of a Deficiency or for	:	
Refund of Unincorporated Business Taxes under	:	
Article 23 of the Tax Law for the years 1962,	:	
1963 and 1964	:	

Sylvia Sealy having filed a petition pursuant to Section 689(b) of the Tax Law for the redetermination of a deficiency in personal income tax under Article 22 of the Tax Law and of unincorporated business tax for the years 1962, 1963 and 1964 and a hearing having been duly held on February 5, 1970, before Nigel G. Wright, Hearing Officer, and the record thereof having been duly examined and considered,

The State Tax Commission hereby

FINDS:

1. The issue here is whether a decedent's estate had terminated, within the meaning of U. S. Treas. Reg. Section 1.641 (b)-3, prior to November 30, 1962, so that the income of the assets thereof, including

a business, should be taxable to the sole legetee rather than to the estate. The deficiency in unincorporated business tax arises from the treatment of a salary paid to petitioner as a salary paid to a proprietor subject to the \$5,000 limitation of Tax Law Section 708(a). The deficiencies give credit for amounts previously paid by the estate. There is no disagreement with the computation of the deficiencies.

2. The deficiencies asserted are in the following amounts:

	<u>1962</u>	<u>1963</u>	<u>1964</u>
Personal Income Tax	\$705.00	\$699.85	\$700.00
Unincorporated Business Tax	280.00	280.00	280.00

3. Reginald O. Sealy died on December 5, 1960. His will left his entire estate to his widow, Sylvia Sealy, "for her to have and own outright knowing that she will give proper consideration thereafter to our two children, Robert and Adrienne." Sylvia Sealy was executrix of the estate. Estate taxes were paid on June 8, 1962. The estate filed tax returns on the basis of a fiscal year ending November 30.

4. As part of his estate, Reginald O. Sealy left a retail liquor store, a sole proprietorship. The will gave no power to the executrix to continue the business. This business was incorporated in 1965.

5. Petitioner is a teacher and thought that the liquor store would interfere with her teaching both as to time and as to community reputation. A former employee of the store was retained as manager

until her son was old enough to run the business. The liquor license was transferred directly from the name of the estate to the son sometime in 1965. The son had become 21 on November 10, 1962. It was never contemplated that the business should be liquidated.

6. The debts of the estate were due were paid off very soon after the date of death. Certain long term debts payable in the future were outstanding. One debt, for payments to a former partner of deceased, was payable out of income of the liquor business. No detailed information was given with respect to any long term debt.

7. No proceedings in Surrogates Court have taken place since the appointment of the executrix.

8. All the evidence indicates that the estate could have been closed on November 30, 1962, at the latest. The estate was kept open not to liquidate assets but for the personal convenience of family members in transferring the ownership of a going business.

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

DECIDES:

A. The petitioner has not carried the burden of proof that the continuation of the estate was not unduly prolonged.

B. The petitions are denied and the deficiencies are affirmed together with such interest, if any, as may be due pursuant to Section 684 of the Tax Law.

DATED: Albany, New York

December 31, 1970

STATE TAX COMMISSION

Norman Gallivan
COMMISSIONER

Bruce Menley
COMMISSIONER

Milton Korman
COMMISSIONER