Smith, Deforest Margaret
Personal 16

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

Estate of Margaret DeForest Smith

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) 1955 & 1956

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 4th day of January, 1971, she served the within Notice of Decision (or Determination) by (certified) mail upon Estate of Margaret DeForest Smith (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

David Winer
c/o Winer, Newburger & Sive
161 E. 42nd 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

4th day of January, 1971

Linda Wilson

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition of Estate of Herman Bechler 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) 1955 & 1956	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 4th day of January, 1971, she served the within Notice of Decision (or Determination) by (certified) mail upon Estate of Herman Bechler (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Ralph B. Neuburger, Esq.
445 Park 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

4th day of January, 1971.

Linda Wilson

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

Estate of DeForest Lyon

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) 1955 & for Jan. 1, 1956 through June 12, 1956 & June 13, 1956 through Dec. 31, 1956

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 4th day of January, 1971, she served the within Notice of Decision (or Determination) by (certified) mail upon Estate of DeForest Lyon (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Prentice K. Smith, Co. Ex.
c/o First Boston Corp.,
20 Exchange Place
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.

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Sworn to before me this

4th day of January, 1971

Linda Wilson

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

Estate of Margaret DeForest Smith

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) 1955 & 1956

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 4th day of January, 1971, she served the within Notice of Decision (or Determination) by (certified) mail upon Estate of Margaret DeForest Smith (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Estate of Margaret DeForest Smith
c/o Prentice K. Smith, Co. Ex.
c/o First Boston Corp., 20 Exchange Place
New York, New York

Sent to
Daniel Winer
161 E 42nd St. - N.Y.

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

4th day of January, 1971.

Joyce A. Van Patten

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

Estate of Herman Bechler

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) 1955 & 1956.

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 4th day of January, 1971, she served the within Notice of Decision (or Determination) by (certified) mail upon Estate of Herman Bechler (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Estate of Herman Bechler
Anne T. Bechler, Exec.
c/o Ralph B. Neuburger, Esq.
445 Park 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

4th day of January, 1971.

Joyce S. Van Patten

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

Estate of DeForest Lyon

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) 1955& for Jan. 1, 1956 through June 12, 1956 & June 13, 1956 through Dec. 31, 1956

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
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State of New York
County of Albany

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Sent to Rep.

Estate of DeForest Lyon
c/o Prentice K. Smith-Co. Ex.
c/o First Boston Corp., 20 Exchange Place
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

4th day of January, 1971.

Joyce S. Van Patten

Martha Funaro

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application of The Estate of DeForest Lyon for Revision or Refund of Personal Income Taxes under Article 16 of the Tax Law for the year 1955 and for the periods January 1, 1956, through June 12, 1956 and June 13, 1956 through December 31, 1956	DETERMINATION

In the Matter of the Application

of

The Estate of Margaret DeForest Smith

for Revision or Refund of Personal Income Tax under Article 16 of theTax Law for the years 1955 and 1956

In the Matter of the Application

of

HERMAN J. BECHLER AND ANNE C. BECHLER

for Revision or Refund of Personal Income Tax under Article 16 of the Tax Law for the years 1955 and 1956

The taxpayers having filed applications pursuant to Section 374 of the Tax Law for revision of certain assessments and for refund of personal income tax imposed by Article 16 of the Tax Law for the years 1955 and 1956 and such applications having been denied and a hearing having been demanded and duly held on April 3, 1970, before Nigel G. Wright, Hearing Officer, and the recordthereof having been examined and considered

The State Tax Commission hereby

FINDS:

1. The taxpayers filed their returns for 1955 and 1956 on or before April 15, 1956 and April 15, 1957 respectively.

2. Notices of additional assessment were issued on October 31, 1958, against the taxpayers for the year 1955 in the following amounts: Lyon, $1,179.03; Smith $1,768.54; Bechler, $594.82.

3. The applications for refund were filed on October 30, 1959, more than two years after the filing of the tax returns to which they pertained.

4. Notices of additional assessment were issued on April 14, 1965, pursuant to waivers, against taxpayers for the year 1956 in the following amounts: Lyon, $331.98 and $79.88 in two assessments; Smith $797.05; Bechler, no assessment.

5. Each of the decedents, DeForest Lyon, Margaret DeForest Smith and Herman Bechler were partners in Smith and Gallatin a firm of stock brokers who with another firm engaged in a joint venture to act as specialists in certain stocks listed on the New York Stock Exchange.

6. The joint venture in 1955 paid $94,838.06 in transfer taxes. Smith and Gallatin's share was $75,870.06. Each petitioner herein was attributed the following shares of that sum: Smith, $25,264.86; Lyon, $16,843.24 and Bechler, $8,497.49.

7. The partnership claimed the transfer taxes on its returns as deductions from normal income as pertaining to securities in which they were specialists which were themselves subject to normal tax.

8. The assessments deny the deduction of transfer taxes from normal income and consider such deduction to be from capital gain only.

9. Although taxpayers were specialists in the securities that were transferred no showing was made as to the amount of such securities

in inventory as compared with the amount necessary to carry on activities as a specialist.

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

DETERMINES:

A. The taxpayers have not overcome the presumption that the securities traded on which transfer taxes were paid were necessary to carry on their activities as specialists. The excess of such securities over a reasonable amount are capital assests under Article 16 of the Tax Law and transfer taxes pertaining to such shares are capital deductions.

B. The applications for refund were untimely and are dismissed.

C. The assessments do not contain taxes or other charges which could not have been lawfully demanded.

D. The applications for revision of the assessments are denied and such assessments are affirmed together with such interest and additional charges, if any, as may be due pursuant to Section 376 and 377 of the Tax Law.

DATED: Albany, New York
December 31, 1970

STATE TAX COMMISSION

Norman Gallman
COMMISSIONER

COMMISSIONER

Milton Koerner
COMMISSIONER