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STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

ADELE L. (HYNES) HAUPT

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) 1965

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

State of New York  
County of Albany

Lynn 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 21st day of June , 19 72 she served the within  
Notice of Decision (or Determination) by (certified) mail upon ADELE L. (HYNES)  
HAUPT (representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: Adele L. (Hynes) Haupt  
25 Sutton Place South  
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

21st day of June , 1972.

Rae Zimmerman

Lynn Wilson





STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A

STATE CAMPUS

ALBANY, N. Y. 12226

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION

NORMAN F. GALLMAN, ACTING PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

STATE TAX COMMISSION  
HEARING UNIT

EDWARD ROOK

SECRETARY TO  
COMMISSION

ADDRESS YOUR REPLY TO

**DATED:** Albany, New York  
**June 21, 1973**

**Adale I. (Myres) Haupt**  
**25 Sutton Place South**  
**New York, New York**

**Dear Ms. Haupt:**

Please take notice of the **DECISION**  
of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to  
Section(s) **690** of the Tax Law, any  
proceeding in court to review an adverse deci-  
sion must be commenced within **4 months**  
from 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 relative  
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

Enc.

cc: Petitioner's Representative  
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
ADELE L. (HYNES) HAUPT :  
for a Redetermination of a Deficiency : DECISION  
or for Refund of Personal Income Taxes :  
under Article 22 of the Tax Law for :  
the Year 1965. :

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Taxpayer filed a petition pursuant to section 689 of the Tax Law for a redetermination of a deficiency of personal income taxes imposed by Article 22 of the Tax Law for the year 1965. A hearing thereon was duly held before Nigel G. Wright, Hearing Officer, in the offices of the State Tax Commission in New York City on May 5, 1970. Taxpayer appeared through Harold Seiden of 38D Madison Avenue, New York City and the Income Tax Bureau through Edward H. Best, Esq. (Alexander Weiss, of Counsel).

THE ISSUE

The issue is the proceeds of the sale of real estate by a fiduciary which is ordinary income by reason of the "recapture" of depreciation provisions of section 1250 of the Internal Revenue Code taxable to the income beneficiary of the estate.

FINDINGS OF FACT

1. The deficiency of \$1,623.50 is based upon the failure of the taxpayer to include taxable income of \$16,235.00 for the year 1965. The taxpayer admits that \$5,955.00 of this amount should have been included in her taxable income for that year but disputes the fact that the balance \$10,280.00 should be also included.

2. The taxpayer, Adele L. Haupt, is the widow of Stuart Haupt, who died on December 1, 1963. By the terms of decedent, his will

bequeathed his property to two trusts which he established names, Trust "A" for his wife for life with a power of appointment at her death - qualifying her for the estate tax marital deduction; and Trust "B" for his wife for life with remainder to his children. Under each trust, the trustees had power to invade the corpus of the trust fund for the support and maintenance of the taxpayer.

3. The estate adopted a fiscal year ending November 30 and in the fiscal year 1965 distributed \$20,000.00 to taxpayer which was paid out of accumulated income and was reported by the taxpayer in her income tax return as taxable to the extent of \$1,595.00 and the remainder was reputed as nontaxable.

4. On April 1, 1965, the estate sold a 4/19 interest in Berkshire Properties, a parcel of real estate, for \$619,172.00, which property had been depreciated at a 150% rate for tax purposes. It is presumed, in absence of information as to distributions to beneficiaries in previous years, that only the estate benefited from the depreciation deduction (see Internal Revenue Code section 167(h)).

5. In its federal return the estate declared a basis of \$133,050.00, an adjusted basis of \$596,093.00 and a gain of \$23,079.00. The sum of \$10,707.00 was declared to be ordinary gain and \$12,372.00 or this amount to be capital gain. The executors allocated the entire proceeds of the sale including the enhancement in its value to the corpus of the estate.

Upon the foregoing findings and all the evidence in the case,

The State Tax Commission hereby,

DECIDES:

A. That the taxpayer, as a beneficiary of the estate, is

taxable upon any amount received by her to the extent of the "distributable net income" of the estate. The taxpayer is taxable on the amount here in dispute since such amount enters into the computation of "distributable net income." Such "distributable net income" is defined in Internal Revenue Code section 643 (a) as the taxable income of the Trust with certain modifications but no modification is relevant to this situation. Thus the amount here in dispute is considered income for tax purposes. This is so even through the proceeds from the sale of assets in the estate, including any increase in value thereof, are allocable to the corpus of the estate or trust and not to the income beneficiaries (E.P.T.L. section 11-2.1(b)(2)(A); Re Adler 1964 Misc. 544). Thus the effect of section 1250 of the Internal Revenue Code is not only to change capital gain to ordinary income but also to shift the tax from the estate to the beneficiary. This happens, of course, only in years when the beneficiary receives amounts which would be otherwise tax exempt.

B. The petition is denied and the deficiency is affirmed together with such interest, if any, as may be due pursuant to section 684 of the Tax Law.

DATED: Albany, New York

*June 21, 1972.*

STATE TAX COMMISSION

*Norman Gallman*  
COMMISSIONER

*George Stanley*  
COMMISSIONER

*Milton Koenig*  
COMMISSIONER