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STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition

of  
ALFRED ROMNEY

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) 1964, 1965 & 1966

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

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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 19th day of January , 1972, she served the within Notice of Decision (or Determination) by (certified) mail upon Harold J. Goldschmidt (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Harold J. Goldschmidt  
61 Broadway  
New York, New York 10006

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

19th day of January , 1972.

Paul Zimmerman

Martha Funaro



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION  
HEARING UNIT

EDWARD ROOK  
SECRETARY TO  
COMMISSION

STATE TAX COMMISSION

NORMAN F. GALLMAN, PRESIDENT  
A. BRUCE MANLEY  
MILTON KOERNER

BUILDING 9, ROOM 214A

STATE CAMPUS  
ALBANY, N. Y. 12227

AREA CODE 518  
457-2655, 6, 7

ADDRESS YOUR REPLY TO

**Dated:** Albany, New York

**January 19, 1972**

**Alfred Runney**  
**154 East 78th Street**  
**New York, New York 10021**

**Dear Sir:**

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

Please take further notice that pursuant to section(s)  
of the Tax Law any proceeding  
in court **690** to review an adverse decision must be commenced  
within **4 Months** after 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 relating 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

cc Petitioner's Representative  
Law Bureau

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition

of

ALFRED ROMNEY

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) 1964, 1965 & 1966

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

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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 19th day of January , 1972, she served the within Notice of Decision (or Determination) by (certified) mail upon Alfred Romney

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

wrapper addressed as follows: Alfred Romney  
154 East 78th Street  
New York, New York 10021

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

19th day of January , 1972.

Rae Zimmerman

Martha Funaro

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
ALFRED ROMNEY : DECISION  
for a Redetermination of a Deficiency :  
or for Refund of Personal Income Taxes :  
under Article 22 of the Tax Law for the :  
Years 1964, 1965 and 1966. :

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Alfred Romney filed a petition under section 689 of the Tax Law for the redetermination of a deficiency in personal income taxes under Article 22 of the Tax Law for the years 1964, 1965 and 1966. There being no issue of fact and the petitioner having waived a hearing, the case is submitted to the State Tax Commission for decision on the basis of the file of the Income Tax Bureau with respect to said petition. Said file has been duly examined and considered.

ISSUE

The issue in this case is whether it is the trust or the beneficiary who is taxable on distributions of stock by a mutual fund which are received by the trust and turned over to the beneficiary as current income of the trust when such distributions of stock are taxable at capital gain rates.

FINDINGS OF FACT

1. The deficiency notice dated April 14, 1969, finds that petitioner had additional taxable income as a result of the distribution of capital gains from two trusts. The increases in income and in tax are as follows:

	<u>1964</u>	<u>1965</u>	<u>1966</u>
From "Henry" trust	\$8,895.93	\$9,901.44	\$9,107.37
From "Andrew" trust	<u>                    </u>	<u>15,746.30</u>	<u>14,026.77</u>
Additional income	\$8,895.93	\$25,647.74	\$23,134.14
Additional tax due	444.80	1,282.39	1,156.71
Refunds due to trusts			
"Henry" trust	\$118.35	\$247.23	\$118.15
"Andrew" trust		<u>268.59</u>	<u>230.67</u>
	<u>\$118.35</u>	<u>\$515.82</u>	<u>\$348.82</u>

The additional tax due was computed to be \$2,883.90 plus interest of \$476.18 to the date of the deficiency.

2. The trusts in question were created by each of the petitioner's sons; Henry J. Romney and Andrew Romney. They were created in the same day, May 29, 1958, and with the same trustee. The "Andrew" trust was made up solely of shares of the Abacus Fund and the "Henry" trust was made up predominantly of such shares. The life beneficiary of both was the petitioner, Alfred Romney.

3. Each of the trusts in question distributed to petitioner the total of the dividends and distributions which it had received during the taxable years in question. Such distributions consisted largely of the stock certificates which the trusts had received as distributions from the Abacus Fund as a return of capital on the Abacus shares. Such distributions on the Abacus shares reduced the tax basis of the Abacus shares to the trustee to zero in either years prior to the years in question or in the years in question and the value of later distributions are taxable at capital gain rates.

4. The trusts had the same administrative provisions among which were the following: all capital gain taxes are to be paid out of principal even though they may arise out of transactions of exclusive benefit to the income beneficiaries. If capital gain taxes are payable by the donor then the trustee shall reimburse the donor out of principal. The amounts received from liquidating

distributions made by a corporation in the process of dissolution shall be allocated to principal. Distributions in the stock of the distributing corporation shall be allocated to principal or income in the sole discretion of the trustee. Furthermore, directly in issue here, is a provision with respect to distributions reading as follows: "All dividends or other distributions paid on any securities held by the trustee, whether ordinary or extraordinary, whether in cash, stocks, bonds or other property and including dividends of wasting-asset corporations and capital gains distributions of regulated investment companies, shall be income, even though such dividends or other distributions be regarded as a return of capital resulting in reduction of cost basis or in capital gain for tax purposes and regardless of whether such dividends or distributions represent or are charged against earnings or capital of the declaring corporation."

CONCLUSIONS OF LAW

The petitioner is taxable on the capital gains received by him from the trust. A beneficiary of a trust is taxable on the lesser of the amount he actually receives from the trust or the amount of the "distributable net income" of the trust. The value of the shares of stock received by the beneficiary undoubtedly is included in the amount he receives and he will be taxable on that amount unless "distributable net income" is less. The "distributable net income" of the trust is the taxable income of the trust which in this case is the capital gain computed on the value of the shares received by the trust unless such capital gains are excluded by the specific provisions of the statute (I.R.C. 643(a)(3)). Such an exclusion can be made only when the capital gains are allocable by the trust instrument to the corpus of the trust and then only

if certain conditions are met (I.R.C. §643(a)(3)). In this case, it is clear that the gains must be included in "distributable net income". The provisions of the trust instrument which explicitly allocates to income all distributions on shares even though resulting in capital gain for tax purposes necessarily also allocates to income the capital gain incurred by such distributions within the meaning of U.S. Treasury Regulation 1.643(a)-3(a)(1). Furthermore, it is clear that the distribution of the shares to the beneficiary necessarily implies that the capital gain incurred by the trust on receipt of such shares was actually distributed to the beneficiary within the meaning of U.S. Treasury Regulation 1.643(a)-3(a)(2), (see also U.S. Treasury Regulation 1.643(a)-3(d) Example (3)). This is so despite the fact that the value of the shares received and distributed by the trust may not be equal to the capital gain realized by the trust because of a reduction in the tax basis of assets held by the trust. (See U.S. Treasury Regulation §1.643(a)-3(d) Example 3). The fact that the Federal regulations refer by example to cases where sales of assets are made by a trust instead of cases where the assets are retained by the trust can make no difference and no authority or reason has been advanced that there should be a difference. This result is consistent with practicality since the beneficiary who received the distribution will pay the tax and the trustee who is left with no income or increase in assets will not have to raise money to pay the tax. This result is also to be expected since if the distribution was an ordinary dividend, there would be no question that the beneficiary would be taxable. Since the distribution is either tax free (by reducing basis) or at capital gain rates because of the financial status of the corporation the beneficiary will benefit to that extent but there is no reason to absolve him completely



of tax at the expense of shifting the tax onto the trustee.

DECISION

The petition is denied and the deficiencies are affirmed together with such interest, if any, as may be due under section 684 of the Tax Law.

DATED: Albany, New York  
*January 19, 1972*

STATE TAX COMMISSION

*Norman Falkow*  
\_\_\_\_\_  
COMMISSIONER

*Arthur Brasley*  
\_\_\_\_\_  
COMMISSIONER

*Milton Koenig*  
\_\_\_\_\_  
COMMISSIONER