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STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

JAMES C. KIERNAN

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) 1951 through 1955

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 7th day of November , 1973 , she served the within  
Notice of Decision (or Determination) by (certified) mail upon James C. Kiernan

(representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Mr. James C. Kiernan  
19-19 23rd Avenue  
Long Island City, 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

7th day of November , 1973.





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she is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 7th day of November , 1973, she served the within  
Notice of Decision (or Determination) by (certified) mail upon Isidore Feldman, C.P.A.

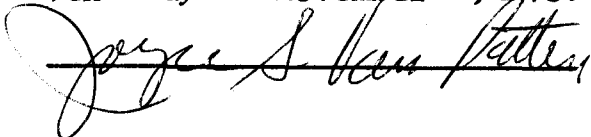
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proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Isidore Feldman, C.P.A.  
1180 Avenue of the Americas  
New York, New York 10036

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known address of the (representative of the) petitioner.

Sworn to before me this

7th day of November , 1973.







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  
HEARING UNIT

EDWARD ROOK  
SECRETARY TO  
COMMISSION

STATE TAX COMMISSION

Mario A. Procaccino,  
~~XXXXXXXXXXXXXXXXXXXX~~ PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

ADDRESS YOUR REPLY TO

Dated: Albany, New York

November 7, 1973

Mr. James C. Kiernan  
19-19 23rd Avenue  
Long Island City, New York

Dear Mr. Kiernan:

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

Please take further notice that pursuant to  
Section(s) **375** of the Tax Law, any  
proceeding in court to review an adverse deci-  
sion must be commenced within **90 Days**  
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,

  
Paul B. Coburn

HEARING OFFICER

Enc.

cc: Petitioner's Representative  
Law Bureau

## STATE TAX COMMISSION

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2. On January 1, 1964, the Income Tax Bureau issued notices of additional assessments against applicant, James C. Kiernan, for

the years 1951, 1952, 1953, 1954 and 1955, in the amounts of \$183.47, \$153.86, \$105.27, \$108.16, and \$11,020.53, respectively. This was based on an audit which discovered unreported income of stock dividends and interest for the years 1951 through 1955 and unreported income of \$80,000.00 for 1955.

3. Applicant, James C. Kiernan, did not list on his income tax return any income received from dividends, interest, or sale of securities for the years 1951 through 1955. The returns for those years were audited. The auditor obtained applicant's brokerage accounts from various brokerage firms and analyzed them. He obtained the cost of these securities and computed profits and losses. For those securities, in which he did not know the cost, he estimated it by figures given him by the applicant and his own estimates.

4. Applicant was assessed additional personal income tax for the income thus discovered.

5. Applicant, James C. Kiernan, failed to submit documentary or other sufficient evidence to prove that he did not obtain any income from stock dividends and interest for the years 1951 through 1955.

6. Applicant, James C. Kiernan, shared a safe deposit box with one named Timothy J. Shine. When Timothy J. Shine died, the safe deposit box was opened and \$100,000.00 was found inside it. The Surrogate's Court found that the \$100,000.00 was an inter vivos gift from Timothy J. Shine to James C. Kiernan, the Appellate Division in 4 App. Div. 1026, upheld the lower court ruling. Before the Court of Appeals heard the case, the matter was settled and James C. Kiernan accepted \$80,000.00 in satisfaction of the \$100,000.00.

CONCLUSIONS OF LAW

A. That the Income Tax Bureau's estimate of applicant, James C. Kiernan's additional income, due to discovery of stock dividends and interest paid for the years 1951 through 1954, was correct since applicant failed to submit documentary or other sufficient evidence to dispute the calculation.

B. That the \$80,000.00 received by applicant, James C. Kiernan, was a gift and thus not taxable as personal income.

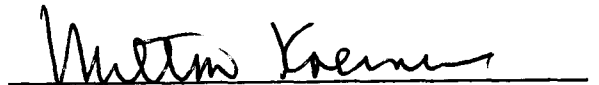
C. That the application of James C. Kiernan is granted to the extent that the net income should be reduced from \$87,450.12 to \$7,450.12 for the year 1955. The application is denied in all other respects.

DATED: Albany, New York  
November 7, 1973

STATE TAX COMMISSION

  
COMMISSIONER

  
COMMISSIONER

  
COMMISSIONER