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STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
:
of
:
ESTATE OF ETHEL USHER HILLYER
LYDIA S. GEORGE, EXECUTRIX
:
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) 1971
:

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 July , 1974, she served the within Notice of Decision (or Determination) by (certified) mail upon Estate of Ethel Usher Hillyer, Lydia S. George (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mrs. Lydia S. George
R.D. #2
Mechanicville, New York 12118

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 July 1974.
James S. Kaufmann

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
ESTATE OF ETHEL USHER HILLYER
LYDIA S. GEORGE, EXECUTRIX
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) 1971

AFFIDAVIT OF MAILING
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State of New York
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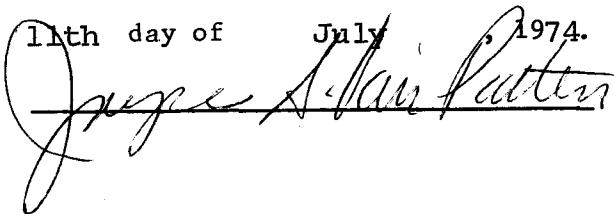
Martha Funaro , being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 11th day of July , 1974, she served the within Notice of Decision (or Determination) by (certified) mail upon Doyle and Pickett, Esqs. (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Doyle and Pickett, Esqs.
42 North Main Street
Mechanicville, New York 12118

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 July , 1974.







STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

STATE TAX COMMISSION

MARIO A. PROCACCINO, PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

BUILDING 9, ROOM 214-A
STATE CAMPUS
ALBANY, N.Y. 12227

AREA CODE 518

ADDRESS YOUR REPLY TO

MR. WRIGHT 457-2655
MR. LEISNER 457-2657
MR. COBURN 457-2896

Dated: Albany, New York

July 11, 1974

Mrs. Lydia S. George
R.D. #2
Mechanicville, New York 12118

Dear Mrs. George:

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,

L. Robert Leisner
HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

AD-1.12 (8/73)

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
ESTATE OF ETHEL USHER HILLYER :
LYDIA S. GEORGE, EXECUTRIX : DECISION
for a Redetermination of Deficiency or :
for Refund of Personal Income Tax under :
Article 22 of the Tax Law for the Year :
1971. :

Petitioner, Estate of Ethel Usher Hillyer, Lydia S. George, Executrix, has filed a petition for redetermination of deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1971. (File No. F 2043.) A calendar call was scheduled at the offices of the State Tax Commission, Building #9, State Campus, Albany, New York, for November 19, 1973, at 11:30 A.M. On October 31, 1973, petitioner, Estate of Ethel Usher Hillyer, Lydia S. George, Executrix, executed a written waiver of formal hearing and requested that the State Tax Commission decide the case upon the entire record contained in the file. The State Tax Commission renders the following decision after due consideration of said record.

ISSUE

Whether petitioner's, Estate of Ethel Usher Hillyer, Lydia S. George, Executrix, sale of stock to pay Federal estate tax was a nontaxable distribution under section 303A of the Internal Revenue Code?

FINDINGS OF FACT

1. Petitioner, Estate of Ethel Usher Hillyer, Lydia S. George, Executrix, filed both a Federal estate tax return and a New York State income tax fiduciary return for the year 1971.

2. Petitioner, Estate of Ethel Usher Hillyer, Lydia S. George, Executrix, paid Federal estate tax on May 8, 1972, in the amount of \$540,923.87 and New York State estate tax on November 6, 1972, in the amount of \$124,337.20. In order to pay said Federal tax, petitioner was forced to sell 2,465 shares of International Business Machines stock on November 29, 1971.

3. On April 17, 1972, petitioner, Estate of Ethel Usher Hillyer, Lydia S. George, Executrix, filed an amended New York State income tax fiduciary return and paid an additional tax of \$3,193.72. On May 17, 1972, petitioner filed a second amended return claiming a \$33,098.01 deductible distribution on said return pursuant to section 303A of the Internal Revenue Code, thus resulting in no income tax due for the year 1971.

4. On January 18, 1973, the Income Tax Bureau disallowed petitioner's claim in full on the grounds that section 303A of the Internal Revenue Code applies to a distribution of property by a corporation in redemption of stock of the corporation and that since this was a sale of stock on the open market, section 303A did not apply.

CONCLUSIONS OF LAW

A. That petitioner's, Estate of Ethel Usher Hillyer, Lydia S. George, Executrix, sale of stock on the open market to pay Federal estate tax did not qualify as a nontaxable distribution under


section 303A of the Internal Revenue Code.

B. That the petition of Estate of Ethel Usher Hillyer, Lydia S. George, Executrix, is in all respects denied and the Notice of Disallowance issued January 18, 1973 is sustained.

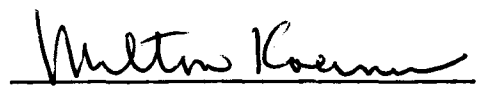
DATED: Albany, New York

July 11, 1974

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER