

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ESTATE OF JESSE HARTMAN
by Charles Looker, Co-executor

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

For a Redetermination of a Deficiency or
a Refund of Personal Income
Taxes under Article (s) 22 of the
Tax Law for the ~~years~~ F/Y/E 8/31/70;
and 8/31/71.

State of New York
County of Albany

Donna Scranton

, 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 May, 1976, she served the within

Notice of Decision (~~on Determination~~) by (certified) mail upon Estate of
Jesse Hartman
by Charles Looker,
Co-executor (~~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 Jesse Hartman
by Charles Looker, Co-executor
Proskauer, Rose, Goetz & Mendelsohn
300 Park Avenue
New York, N. Y. 10022

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 May, 1976.

Donna Scranton

Janet MacL...

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

ESTATE OF ^{of} JESSE HARTMAN
by Charles Looker, Co-executor

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a Refund of Personal Income
Taxes under Article ~~(s)~~ 22 of the
Tax Law for the ~~years~~ F/Y/E 8/31/70
and 8/31/71.

State of New York
County of Albany

Donna Scranton, 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 May, 1976, she served the within Notice of Decision ~~(or Determination)~~ by (certified) mail upon Proskauer, Rose, Goetz & Mendelsohn (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Proskauer, Rose, Goetz & Mendelsohn
300 Park Avenue
New York, N. Y. 10022

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 May, 1976.

Janet Mack

Donna Scranton



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N.Y. 12227

ADDRESS YOUR REPLY TO

DATED: Albany, N.Y.
May 19, 1976

TELEPHONE: (518) 457-3850

Estate of Jesse Hartman
by Charles Locker, Co-executor
Proskauer, Ross, Goets & Mendelsohn
300 Park Avenue
New York, N. Y. 10022

GENTLEMEN:

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.

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. They
will be referred to the proper party for reply.

Very truly yours,


PAUL E. COBURN
SUPERVISING TAX COMPLAINCES
HEARING OFFICER

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
ESTATE OF JESSE HARTMAN : DECISION
by Charles Looker, Co-executor :
for a Redetermination of Deficiency or :
for Refund of Personal Income Tax under :
Article 22 of the Tax Law for the :
Fiscal Years Ending August 31, 1970, :
and August 31, 1971. :

The Estate of Jesse Hartman by Charles Looker, its co-executor, filed a petition under section 689 of the Tax Law for the redetermination of a deficiency in personal income tax under Article 22 of the Tax Law for the fiscal years ending on August 31, 1970, and August 31, 1971.

Said deficiency was asserted by notice issued on January 29, 1973, under file number F-1926 and is in the amount of \$17,258.81 plus interest of \$1,757.33 for a total of \$19,016.14.

In lieu of a hearing, petitioner submits his case to the Commission on the file of the Income Tax Bureau. Petitioner is represented by Alan S. Rosenberg, Esq., of Proskauer, Rose, Goetz & Mendelsohn. The record of the case has been duly examined and considered.

ISSUE

The issue in this case is whether an estate may claim on its fiduciary return a distributions deduction for amounts payable to a charitable beneficiary.

FINDINGS OF FACT

1. Jesse Hartman died on November 2, 1967. His last will and testament made bequests to his widow of real estate, personal effects and household effects and left the residue to be divided into two parts, one part to his widow and the other to charity, the charity being The Hartman Foundation, Inc., a New York membership corporation.

2. During the fiscal year ending in 1970, all amounts paid out by the estate were paid to The Hartman Foundation, Inc., and nothing was paid to the widow. During the fiscal year ending in 1971, only a very small amount was paid to the widow and a much larger amount was paid to The Hartman Foundation, Inc.

3a. The estate's books and records have not been submitted in evidence. Its Federal tax return is available only for the fiscal year ending August 31, 1970. For that year the estate had gross income of \$188,859.63 including capital gains of \$20,756.09 allocable to corpus. It had tax-exempt income of \$12,823.02.

3b. The return claims the amounts paid, credited or otherwise distributed to be in the amount of \$388,926.98.

4a. The estate on its Federal return for the fiscal year ending August 31, 1970, had deductions amounting to \$102,264.82 and a "line 16" amount of \$86,594.81.

4b. The deductions included a charitable deduction of \$90,517.54 made up of \$84,722.95 of the current years income (less a tax exempt portion thereof) and \$10,378.05 of the current years capital gains allocable to corpus both of which were paid or permanently set aside for charitable purposes.

4c. The estate had further deductions of \$87,194.81 and showed a taxable loss of \$600.00. These further deductions were for capital gains, an exemption and a distributions deduction.

4d. The distributions deduction was claimed in the amount of \$76,216.76 computed from a distributable net income of \$84,456.32 as reduced by tax-exempt interest contained therein.

CONCLUSIONS OF LAW

The distributions deduction herein issue must be denied. Although a distribution to a charity comes within the literal language of the deduction for distribution to beneficiaries, the structure of the statute and its purpose would be violated where the beneficiary

is itself tax exempt. U.S. Treas. Reg. §1.663(a)-2; Mott v. U.S.,
462 F.2d 512, Cert. den. 409 U.S. 1108.

DATED: Albany, New York
May 19, 1976

STATE TAX COMMISSION

PRESIDENT

COMMISSIONER

COMMISSIONER