

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

TRUST U/W/O WILLIAM H.

TAYLOR

For a Redetermination of a Deficiency or
a Revision of a Determination or a Refund
of Personal Income
Taxes under Article (8) 22 of the
Tax Law for the Year (1967) or Period(s) 1967.:

AFFIDAVIT OF MAILING

State of New York
County of Albany

Carmen Mottolese, 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 28th day of September, 1976, she served the within

Notice of Decision by (certified) mail upon Trust U/W/O William H.
Taylor, Manufacturers Hanover Trust
Company, Trustee (representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Trust U/W/O William H. Taylor
Manufacturers Hanover Trust Company, Trustee
350 Park Avenue
New York, New York 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 Postal Service 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

28th day of September, 1976

Carmen Mottolese

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

TRUST U/W/O WILLIAM H.
TAYLOR

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article (a) 22 of the :
Tax Law for the Year (a) or Period(s) 1967.:

State of New York
County of Albany

Carmen Mottolese, 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 28th day of September, 1976, she served the within
Notice of Decision by (certified) mail upon John F.
Rossi, Esq. (representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: John F. Rossi, Esq.
350 Park Avenue
New York, New York 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 Postal Service within the State of New York.

That deponent further says that the said addressee is the (representative
of the) petitioner herein and that the address set forth on said wrapper is the
last known address of the (representative of the) petitioner.

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Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

TAX APPEALS BUREAU

STATE CAMPUS
ALBANY, N.Y. 12227

STATE TAX COMMISSION

ADDRESS YOUR REPLY TO

September 28, 1976

TELEPHONE: (518) 457-3850

Trust U/W/O William H. Taylor
Manufacturers Hanover Trust
Company, Trustee
350 Park Avenue
New York, New York 10022

Dear Mr. Taylor:

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

Please take further notice that pursuant to
Section(3) **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,

Frank J. Puccia
Frank J. Puccia
Supervisor of Small
Claims Hearings

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE TAX COMMISSION

In the Matter of the Petition :
of :
TRUST U/W/O WILLIAM H. TAYLOR :
for a Redetermination of a Deficiency :
or for Refund of Personal Income Tax :
under Article 22 of the Tax Law for :
the Year 1967. :

Petitioner, Trust U/W/O William H. Taylor, Manufacturers Hanover Trust Company, Trustee, 350 Park Avenue, New York, New York 10022, filed a petition for a redetermination of a deficiency or for refund of personal income taxes under Article 22 of the Tax Law for the year 1967. (File No. F-4419). A small claims hearing was held June 8, 1976 at 9:15 A.M. before Harry Huebsch, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York. The petitioner appeared by John F. Rossi, Esq. The Income Tax Bureau appeared by Peter J. Crotty, Esq. (Irwin A. Levy, Esq., of counsel).

Whether or not the trust made a proper modification excluding net capital gains realized from the sale of Florida real property.

1. Petitioner, Trust U/W/O William H. Taylor, timely filed Form IT205, 1967 Fiduciary return. On the return, a modification

Also, cited was the Mercantile-Safe Deposit and Trust Company v. Joseph H. Murphy (19 AD 2d 765) for similar reasons.

CONCLUSIONS OF LAW

A. That the constitutionality of the laws of the State of New York are presumed at the administrative level of the New York State Tax Commission. There is no jurisdiction at the administrative level to declare such laws unconstitutional. Therefore, it must be presumed that any section of the Tax Law is constitutional to the extent that it relates to the imposition of income tax liability on the petitioner.

B. That under section 618 of the Tax Law, the New York taxable income of a resident estate or trust is its Federal taxable income plus or minus certain modifications. There is no provision in the Tax Law permitting a modification for the portion of a gain on the sale of out-of-state realty.

C. That the provision of Florida law requiring that the property be administered by a Florida resident does not change the meaning and intent of section 618 of the Tax Law relating to resident trusts. The resident trust cannot escape taxation because of the mere fact that it engaged an ancillary executor to hold the Florida property which was part of the trust corpus at its inception.

was made which reduced income by the gain realized on the sale of Florida property. On audit the Income Tax Bureau disallowed the modification as improper and a Notice of Deficiency was issued April 12, 1971 in the amount of \$892.08 additional tax plus \$160.22 interest for a total of \$1,052.30.

2. William H. Taylor, a domiciliary of New York, died in 1950. Under provisions of his will, a New York Trust came into existence. The Central Hanover Bank and Trust Company of New York was appointed executor. Some of the assets of the Trust were unimproved Florida real property. Because of Florida law requirements, a Florida resident was appointed as ancillary executor to hold the Florida real property.

3. In 1967 the property was sold for a net capital gain of \$8,920.75. This amount was reported as income on the Federal and New York fiduciary returns and then eliminated by modification on the New York return. In 1967 both beneficiaries were nonresidents

4. Petitioner, Trust U/W/O William H. Taylor, agrees that there is no provision in the Tax Law for such a modification and bases the defense on the Safe Deposit and Trust Company of Baltimore v. Commonwealth of Virginia case (280 U.S. 83). The contention is that New York has no jurisdiction to tax such gain since no one in New York has authority over the Florida property or has the power to bring the gain realized within the State of New York.

(4)

D. That the reporting of the Florida income on the Federal return of the trust is clearly indicative as to who actually had authority over the funds and that the Florida executor was merely an agent of the New York trust.


E. That the petition of the Trust, U/W/O William H. Taylor is denied and the Notice of Deficiency is sustained.

DATED: Albany, New York
September 28, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER