

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
ESTATE OF BEULAH DE FOREST WRIGHT :
SCHENECTADY TRUST CO., CO-EXECUTOR :
For a Redetermination of a Deficiency or :
a Refund of Personal Income :
Taxes under Article ~~(8)~~ 22 of the :
Tax Law for the Year(s) 1965 & 1966. :

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

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 Estate of Beulah Notice of Decision (~~and Determination~~) by (certified) mail upon DeForest Wright Schenectady Trust Co., 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 Beulah DeForest Wright Schenectady Trust Co., Co-Executor Reynolds, Richards, Ely & LaVenture 67 Wall Street New York, New York 10005 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
STATE TAX COMMISSION

In the Matter of the Petition

of

ESTATE OF BEULAH DE FOREST WRIGHT :
SCHENECTADY TRUST CO., 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 (B) 22 of the :
Tax Law for the Year(s) 1965 & 1966. :

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 Reynolds, Ely & LaVenture (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Reynolds, Richards, Ely & LaVenture
67 Wall Street
New York, New York 10005
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.

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19th day of May, 1976.

Janet Mack

Donna Scranton



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

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

TELEPHONE: (518) 457-3850

Estate of Beulah DeForest Wright
Schenectady Trust Co., Co-Executor
Reynolds, Richards, Ely & LaVenture
67 Wall Street
New York, New York 10005

GENTLEMEN:

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,

PAUL E. COBURN
SUPERVISING TAX CONFERENCES
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 BEULAH DE FOREST WRIGHT : DECISION
SCHENECTADY TRUST CO., CO-EXECUTOR :
for a Redetermination of a Deficiency :
or for Refund of Personal Income Tax :
under Article 22 of the Tax Law for :
the Years 1965 and 1966. :
:

The Estate of Beulah DeForest Wright, Schenectady Trust Co., Co-Executor, c/o Reynolds, Richards, Ely & LaVenture, 67 Wall Street, New York, New York 10005, filed petitions under section 689 of the Tax Law for the redetermination of a deficiency and for a refund of personal income tax under Article 22 of the Tax Law for the years 1965 and 1966.

Said deficiency was asserted by notice issued April 11, 1969, under File No. 66117207 and is in the amount of \$2,569.27 plus interest of \$387.37 for a total of \$2,956.64.

The refund claim was filed on April 14, 1969, and is for the amount of \$547.50 paid with respect to 1965.

In lieu of a hearing, petitioner submits its case to the Commission on the file of the Income Tax Bureau.

Said file has been duly examined and considered.

ISSUES

The issues in this case are (A) whether the petitioner as beneficiary of a trust is deemed under New York Law to have received income in 1965 and 1966 from a trustee which the trustee himself had never received but which was imputed to the trustee under section 951 of the Internal Revenue Code; (B) the method of computation of the beneficiary's share of the New York fiduciary adjustment for 1966; and (C) whether the amount actually received by the beneficiary in 1965 includes a certain amount received by the trust in reimbursement of taxes paid. Neither the petitioner nor the Income Tax Bureau has contested the makeup of the character of the income received by the petitioner from the trust.

FINDINGS OF FACT

1. Mrs. Beulah DeForest Wright, during the years in question, was a resident of Schenectady, New York. She died on July 27, 1967.
2. During the years here in question, Mrs. Wright was the income beneficiary of an inter vivos trust created on April 26, 1932, by W. Howard Wright, now deceased, with the Schenectady Trust Co. as trustee. That trust held shares of Schenectady Chemicals, Canada Ltd. which in turn owned all of the shares of Schenectady Varnish International, S.A., a Panama Corporation.
3. The trust was attributed, under section 951 of the Internal Revenue Code, with taxable income earned by the Panama Company which the trust did not actually receive. The trust paid both Federal and New York taxes in each year. It also received certain income from the

Canadian company as a reimbursement for the taxes, presumably Federal taxes, which were paid with respect to the imputed section 951 income. According to the trusts accounts, which were approved in judicial proceedings in 1969, the matters here in dispute were treated as follows:

(b). No amount was included in either the income or principal accounts to represent the imputed taxable income under section 951 of the Internal Revenue Code.

(c). Amounts representing New York income taxes, as well as Federal taxes, attributable to the preceding year were charged to the income account and

(d). The amounts received as reimbursement for taxes were attributed to the income account. In 1965 this amount is shown as \$4,908.75 which is net of a Canadian 15% withholding tax of \$866.25. In 1966 this amount is \$3,568.50 which includes the withheld tax and a separate expenditure is shown for \$535.28 as such tax.

4(a). On the tax returns of the trust the matters in dispute were treated as follows: The trust reported as "other income" the amount of \$13,421.54 for 1965 and \$11,647.86 for 1966. The entire such amount for 1965 and the amount of \$11,605.40 for 1966 has been now identified as income earned by the Panama corporation and includable in the trust's Federal gross income by reason of section 951 of the Internal Revenue Code.

(b). The trust reported on its Federal returns deductions for the New York taxes paid with respect to the preceding years. (For

1965 it reported no adjustment for such taxes on its New York return but this is not in dispute). For 1966 the trust reported the taxes deducted of \$665.72 as an addition adjustment and increased its own income by that entire amount. These taxes were computed on a New York taxable income of \$12,821.54 which is attributable to the fact that the trust included in its income but not in its distributions to beneficiaries the amount of \$13,421.54 which was imputed to the trust under section 951 of the Internal Revenue Code.

(c). The amounts received as "reimbursements of taxes" were in 1965 reported as taxable income in a grossed up amount. No deduction was taken for the Canadian tax. Presumably a credit for such tax was taken on the Federal return. For 1966, no part of the reimbursement was reported as taxable income and no deduction was taken.

5. The petitioner, as beneficiary of the trust, reported as income received from the trust the amounts indicated on the trust's tax returns as dividends received by her. These amounts were identical with the trusts reported deduction for distributions to beneficiaries. They are not, however, equivalent to the amounts reported as required to be distributed currently.

6(a). For the year 1965, the trust's computations of the amounts shown on its return for its required distribution is consistent with its trust accounts.

(b). For the year 1966, the computation of the required distribution as shown on the return exceeds the amount in the trust accounts by the amounts of Federal income tax and Canadian withholding taxes paid in that year.

(c). For the year 1965, the trust's deduction for distributions to beneficiaries is identical with its net "distributable net income" as computed in accordance with section 643 of the Internal Revenue Code without considering the amounts imputed to the trust as taxable income under section 951 of the Internal Revenue Code. The trust's gross distributable net income would include, in addition, the amount of \$1,393.75 of tax-exempt interest.

(d). For the year 1966, the trust's deduction for distribution to beneficiaries is identical with its net "distributable net income" as computed in accordance with section 643 of the Internal Revenue Code without considering the amounts imputed to the trust as taxable income under section 951 of the Internal Revenue Code and except for the fact it does not include the amount of \$3,568.50 which the trust received from the Canadian corporation as reimbursement of taxes. The trust's gross distributable net income would include in addition, the amount of \$2,854.66 of tax-exempt interest.

(e). The amounts of the trust's required distributions in each year were less than its amount of gross "distributable net income" (including tax-exempt interest) even when the latter amount is computed without the amounts imputed to the trust as taxable income under section 951 of the Internal Revenue Code.

7. The deficiency in issue is computed by raising petitioner's reported income distributable from a trust by the amount of \$13,421.50 for 1965 and the amount of \$12,271.12 for 1966. The amount of \$13,421.50 for 1965 and of \$11,605.40 for 1966 represent the amounts of taxable income attributed to the trust from a foreign nation corporation under section 951 of the Internal Revenue Code. The remaining amount for 1966, \$665.72, represents the "fiduciary adjustment" for that year.

8. The refund claim for 1965 is asserted on the basis that petitioner included in her income stated to be as dividends derived from the trust the amount of \$5,475.00 which in actuality is an amount received by the trust and not in fact distributed to petitioner.

CONCLUSIONS OF LAW

A. The increase in petitioner's distributable income from the trust is erroneous. The computation of the deficiency assumes that the beneficiary, the petitioner herein, should report income on the basis of the "distributable net income" of the trust. It then computes the distributable net income by including the imputed income attributed under section 951 of the Internal Revenue Code.

However, the petitioner in this case should have reported her distributable income from the trust on the basis of the amounts required under the trust instrument to be distributed to her since that was lower than the "distributable net income" of the trust. For 1965 that fact appears on the face of the return. For 1966 that fact becomes obvious when the figures shown on the return are recomputed

to exclude from the required distribution the amounts paid for Federal and Canadian taxes and to include in the distributable net income the Canadian dividend of \$3,568.50. In view of the above it appears that the petitioner herein has already reported too much income from the trust as taxable income. In any event the effect upon her income of the imputed section 951 income become absolutely clear. The petitioner's income, as properly based upon the amount of the trust's required distribution, must be determined under the terms of the trust agreement and the law of New York State (IRC §643(b)). Under New York Law there is no way that the amounts here in question, and which the trustee never received, would be required to be distributed by the trustee to the beneficiary.

B. The fiduciary adjustment in this case should be attributable entirely to the beneficiary under 619(c)(1) of the Tax Law and 120.26(a) of the Regulations. The beneficiary includes in his income for 1966 an amount equal to the entire distributable net income of the trust. The alternate provisions of section 619(d) of the Tax Law and 120.27 of the Regulations cannot apply because the trustee attributed the tax payment in question to the income beneficiary.

C. The refund claim for 1965 must be denied. Petitioner is properly taxable on the amount of the trust income which is required to be distributed currently under the trusts accounts. An examination of the trusts accounts show that the Canadian income in question which, after deducting the withheld tax, amounted to \$4,908.75 was, in fact, and contrary to the assertions of the claim for refund, actually distributed to petitioner.

D. The errors indicated herein in the preparation of the return will be ignored. While the Commission can in some situations consider new reasons for a deficiency or a refund, such new grounds have not been urged and in any event a cursory examination reveals that a computed refund for 1965 and deficiency for 1966 would differ by only a miniscule amount.

DECISION

The deficiency here in issue is erroneous in its entirety and is hereby cancelled.

The denial of the claim for refund was proper and the petition for refund is denied.

DATED: Albany, New York
May 19, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER