

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

ESTATE OF LOUIS R. LONG

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or  
a Revision of a Determination or a Refund  
of Personal Income  
Taxes under Article (s) 22 of the  
Tax Law for the Year (XXXX Period(s))  
1970

State of New York  
County of Albany

Marsina Donnini, 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 22 day of August, 19 77, she served the within Notice of Decision by (certified) mail upon Estate of Louis R. Long,

c/o Irving M. Engel, Esq. (~~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 Louis R. Long  
c/o Irving M. Engel, Esq.  
52 Vanderbilt Avenue  
New York, New York 10017  
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~~) ~~XXXX~~ 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  
22 day of August, 19 77

Marsina Donnini

Janet Mack

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

ESTATE OF LOUIS R. LONG

AFFIDAVIT OF MAILING

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 ~~(3)~~ ~~1970~~  
1970

State of New York  
County of Albany

Marsina Donnini, 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 22 day of August, 1977, she served the within Notice of Decision by (certified) mail upon George Christ, Esq. (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: George Christ, Esq. of Engel, Judge & Miller, Esqs. 52 Vanderbilt Avenue New York, New York 10017 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.

Sworn to before me this  
22 day of August, 1977.

Marsina Donnini

Janet Mack



STATE OF NEW YORK  
STATE TAX COMMISSION  
TAX APPEALS BUREAU  
ALBANY, NEW YORK 12227  
August 22, 1977

JAMES H. TULLY JR., PRESIDENT  
MILTON KOERNER  
THOMAS H. LYNCH

Estate of Louis R. Long  
c/o Irving M. Engel, Esq.  
52 Vanderbilt Avenue  
New York, New York 10017


Dear Mr. Engel,

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

You have now exhausted your right of review at the administrative level. Pursuant to section ~~(s)~~ **690** of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within **4 Months** from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,

  
**JOSEPH CHYRYWATY**  
Hearing Examiner

cc: Petitioner's Representative  
Taxing Bureau's Representative

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
ESTATE OF LOUIS R. LONG : DECISION  
for Redetermination of a Deficiency or :  
for Refund of Personal Income Taxes under :  
Article 22 of the Tax Law for the Year 1970. :

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Petitioner, Estate of Louis R. Long, c/o Irving M. Engel, Esq., 52 Vanderbilt Avenue, New York, New York 10017, has filed a petition for redetermination of a deficiency or for refund of personal income taxes under Article 22 of the Tax Law for the year 1970 (File No. 13284).

A small claims hearing was held before Joseph A. Milack, Small Claims Hearing Officer, on September 15, 1976 at 10:45 A.M. at the offices of the State Tax Commission, Two World Trade Center, New York, New York. The petitioner appeared by George Christ, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq., (Abraham Schwartz, Esq. of counsel).

ISSUE

Whether the decedent, Louis R. Long, properly deducted amounts claimed as alimony payments on the New York State income tax resident return he filed for the year 1970.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The decedent claimed deductions for alimony payments in the sum of \$19,457.07 on his 1970 New York State income tax resident return.

2. On December 28, 1973, the Income Tax Bureau issued a Notice of Deficiency against the decedent in the sum of \$419.66 for the year 1970, upon the grounds that the decedent improperly deducted alimony payments to the extent of \$9,967.05 since these payments, although paid in 1970, were paid or accrued prior to a written agreement.

3. The disallowed deduction for alimony payments consisted of \$3,552.52 which represented payments made prior to the year 1970 and the remainder of \$6,414.53 represented amounts accrued prior to the execution of the written separation agreement on March 24, 1970.

4. On September 30, 1966, the decedent married Lucille Gingsberg. On February 1, 1967 she left the decedent and did not rejoin him.

5. On October 24, 1968, Lucille Long filed a petition to require the decedent to support her.

6. Beginning on November 26, 1968, the decedent's attorney sent several letters to the attorney representing his wife, which stated that the decedent would make weekly payments of forty dollars to his wife pending the hearing of the case.

7. The aforesaid letter stated that the decedent would make the forty dollar (\$40.00) weekly payments "without prejudice to the rights of either party and that if a settlement is arrived at, the terms thereof will be retroactive to October 24, 1968."

8. At the time the aforesaid letters were written, the decedent felt that he was under no obligation to support his wife and the forty-dollar (\$40.00) weekly payments were merely a means of obtaining adjournments of the trial and to induce his wife to a formal separation agreement.

9. On March 24, 1970, the decedent and his wife entered into a written separation agreement which required the decedent to pay to his wife six hundred dollars per month for the period October 24, 1968 through February 24, 1970 and certain monthly payments thereafter until September 24, 1976.

10. The decedent's obligation to his wife for the period October 24, 1968 through February 24, 1970 was reduced by the previous payments of forty-dollars (\$40.00) per week, as stated in the written separation agreement.

11. The decedent's position is that the letters between the attorneys of the two parties constitute a written separation agreement and therefore the alimony payments were made subsequent to a written separation agreement.

12. That, the sum of \$3,552.52 deducted by the decedent for alimony payments in the year 1970 but actually made prior to 1970 were improperly deducted by the petitioner.

13. That, the letters between the attorneys of the decedent and his wife do not constitute a separation agreement.

14. That, the disallowed deduction for alimony payments in the sum of \$6,414.33 were accrued prior to the written separation agreement of March 24, 1970.

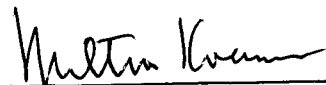
15. That, the decedent is not entitled to deductions for alimony payments under section 215(a) of the Internal Revenue Code, since the payments were not properly includable in the wife's gross income pursuant to section 71(a)(2) of the Internal Revenue Code.

16. That, the petition of the Estate of Louis R. Long is denied and the Notice of Deficiency issued on December 28, 1973 is sustained.

DATED: Albany, New York  
August 22, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER