

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JANE GROSS TRUST

(Alfred Gross, Trustee)

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 (s) ~~1970~~ (s)
1971

AFFIDAVIT OF MAILING


State of New York
County of Albany

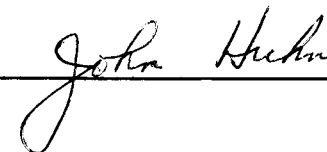
John Huhn, being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 13 day of October, 1978, she served the within
Notice of Decision by (certified) mail upon Jane Gross Trust
(Alfred Gross, Trustee)
~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Jane Gross Trust
c/o Alfred Gross, Trustee
110 East 57th Street
New York, NY 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)~~
~~XXXXXX~~ 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

13 day of October, 1978.





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
JANE GROSS TRUST
(Alfred Gross, Trustee)

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 (s) xxxxxxxx :
1971

State of New York
County of Albany

John Huhn , 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 13 day of October , 1978 , she served the within
Notice of Decision by (certified) mail upon Jack Mitnick, Esq.

(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Jack Mitnick, Esq.
3000 Marcus Avenue
Lake Success, NY 11040

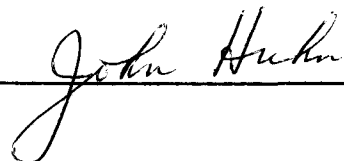
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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

13 day of October , 1978.







STATE OF NEW YORK
STATE TAX COMMISSION
TAX APPEALS BUREAU
ALBANY, NEW YORK 12227

October 13, 1978

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

**Jane Gross Trust
c/o Alfred Gross, Trustee
110 East 57th Street
New York, NY 10022**

Dear Mr. Gross:

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 **(3) 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

In the Matter of the Petition :
of :
JANE GROSS TRUST : DECISION
(Alfred Gross, Trustee) :
for Redetermination of a Deficiency or :
for Refund of Personal Income Tax under :
Article 22 of the Tax Law for the Year :
1971. :

Petitioner, Jane Gross Trust, c/o Alfred Gross, Trustee, 110 East 57th Street, New York, New York 10022, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1971 (File No. 12635).

A small claims hearing was held before Joseph Chyrywaty, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on February 23, 1977 at 9:15 A.M. Petitioner appeared by Jack Mitnick, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Abraham Schwartz, Esq., of counsel).

ISSUE

Whether a donation of 200 shares of stock to a charity in 1971 by the Jane Gross Trust (at the direction of the beneficiary) constituted a distribution to the beneficiary, which increased the trust's Federal distributable net income as well as its deduction for distributions to beneficiaries.

FINDINGS OF FACT

1. Petitioner, Jane Gross Trust, a complex trust, filed a New York State income tax fiduciary return for 1971, on which it claimed a charitable deduction of \$18,647.00.

2. On March 31, 1975, the Income Tax Bureau issued a Notice of Deficiency against petitioner for 1970 and 1971 in the amount of \$2,212.37, plus interest of \$425.06, for a total due of \$2,637.43. Petitioner paid the portion of this deficiency attributable to the year 1970 (i.e., \$28.39, plus interest of \$4.68, for a total of \$33.07) and is not contesting the deficiency for the year 1970. The portion of the deficiency attributable to the year 1971 (i.e., \$2,183.98, plus interest of \$420.38, for a total of \$2,604.36) was issued on the grounds that the trust was not entitled to the charitable deduction of \$18,647.00 claimed on its 1971 New York State income tax fiduciary return, since there were no provisions in the trust instrument for making charitable contributions to a charitable income beneficiary or a charitable remainderman. The deficiency for 1971 was also based on adjustments to the amount of minimum income tax which petitioner computed to be due and to the amount reported as a modification for allocable expenses attributable to items of tax preference.

3. In a letter dated December 13, 1973, the Income Tax Bureau advised petitioner that amended Federal and New York State income tax returns should be filed for both the beneficiary of the Jane

Gross Trust and for the trust itself, in order to effect the adjustments petitioner proposed in a letter dated May 21, 1973 with respect to distributions made by the trust in 1971. However, petitioner did not submit any evidence to show that said amended returns were filed for 1971.

4. A statement attached to petitioner's 1971 U.S. fiduciary income tax return (Form 1041) showed that on December 23, 1971, the trust donated 200 shares of Eastman Kodak Corporation common stock to the Alfred Gross Foundation, Inc. The statement also indicated that the market value of said common stock on that date was 96 5/16 per share. The 200 shares of said common stock were sold on December 23, 1971 for the account of the Alfred Gross Foundation, Inc. by the firm of Katzenberg, Sour & Company.

5. Petitioner conceded that the charitable deduction claimed by the trust in the amount of \$18,647.00 was properly disallowed by the Income Tax Bureau. However, petitioner contended that, even though the charitable deduction was not allowable, no additional tax was due from the trust for the year 1971, since the beneficiary of the trust had directed the trustee to make the charitable donation to the Alfred Gross Foundation, Inc. Accordingly, petitioner argued that this was the same as if the distribution had been made to the beneficiary who in turn made the donation to charity. According to petitioner, the net effect of this was that the trust's Federal

distributable net income should have been increased by \$18,647.00 to \$57,735.00 and its deduction for distribution to beneficiaries should have been increased by \$18,647.00 to \$53,074.00, thereby resulting in no additional tax due by the trust for the year 1971.

6. The Income Tax Bureau acknowledged that the Federal distributable net income of the trust would be increased by the amount disallowed as a charitable deduction. However, it disagreed with petitioner's assertion that the increase in Federal distributable net income automatically increased the trust's allowable deduction for distributions to beneficiaries in the same amount. Since the Federal Form 1041 filed for the trust for 1971 showed that the total amount distributed to the beneficiary was \$41,000.00 (consisting of taxable income of \$39,088.00 and tax-exempt income of \$1,912.00), the Income Tax Bureau contended that the revised deduction for distributions to beneficiaries allowable for 1971 (due to the disallowance of the charitable deduction) was limited to \$39,088.00. Therefore, the Bureau contended that the trust should be allowed an additional deduction for distributions to beneficiaries of \$4,661.00, rather than the additional amount claimed by the petitioner of \$18,647.00.

7. Petitioner did not submit any documentary evidence to show that the fair market value of 200 shares of Eastman Kodak Corporation common stock (i.e., $200 \times \$96.3125 = \$19,262.50$) donated at the beneficiary's request to the Alfred Gross

Foundation, Inc., constituted an item of distributable net income which was included in the trust's gross income for 1971. Petitioner further failed to submit any documentary evidence to show that the donation of the stock constituted an item of income required to be distributed currently or an amount properly paid, credited or required to be distributed to the beneficiary.

CONCLUSIONS OF LAW

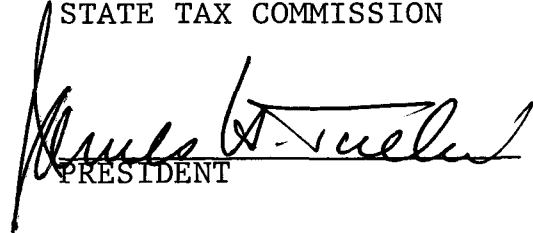
A. That petitioner has failed to sustain the burden of proof required under section 689(e) of the Tax Law to show (1) that the fair market value of 200 shares of Eastman Kodak Corporation common stock donated to a charity at the request of the trust beneficiary was included in the gross income reported on the 1971 U.S. fiduciary income tax return, (2) that said donation constituted an amount required to be distributed currently or an amount properly paid, credited or required to be distributed to the beneficiary, (3) that the donation of said stock constituted other than an improper distribution of trust corpus or (4) that the trust paid the beneficiary taxable income in excess of \$39,088.00, rather than the amount previously allowed by the Income Tax Bureau of \$34,427.00.

B. That the petition of the Jane Gross Trust is granted to the extent of increasing the trust's allowable deduction for distributions to beneficiaries to \$39,088.00 for the year 1971; that the Income Tax Bureau is hereby directed to accordingly

modify the Notice of Deficiency issued March 31, 1975 with respect to the year 1971 and to cancel the amount of the deficiency for the year 1970, and that except as so granted, the petition is in all other respects denied.

DATED: Albany, New York
October 13, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER