

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Edmund Greene :
and Helen F. C. Greene : AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of :
Personal Income Tax :
under Article 22 of the Tax Law :
for the Year 1969. :

State of New York
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 22nd day of February, 1980, he served the within notice of Decision by mail upon Edmund Greene, and Helen F. C. Greene, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Edmund Greene
and Helen F. C. Greene
c/o Finley, Kumble, Wagner, Heine & Underberg
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 petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
22nd day of February, 1980.

Joanne Knapp



STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Edmund Greene :
and Helen F. C. Greene : AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of :
Personal Income Tax :
under Article 22 of the Tax Law :
for the Year 1969. :

State of New York
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 22nd day of February, 1980, he served the within notice of Decision by mail upon Leon M. Kerry the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

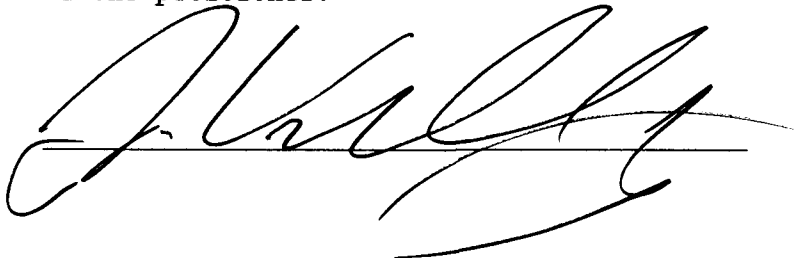
Mr. Leon M. Kerry
Time & Life Bldg.
Rockefeller Center
New York, NY 10022

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 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
22nd day of February, 1980.

Joanne Krapp



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

February 22, 1980

Edmund Greene
and Helen F. C. Greene
c/o Finley, Kumble, Wagner, Heine & Underberg
425 Park Ave.
New York, NY 10022

Dear Mr. & Mrs. Greene:

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:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Leon M. Kerry
Time & Life Bldg.
Rockefeller Center
New York, NY 10022
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
EDMUND GREENE and HELEN F.C. GREENE	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article	:	
22 of the Tax Law for the Year 1969.	:	

Petitioners, Edmund Greene and Helen F.C. Greene, c/o Finley, Kumble, Wagner, Heine & Underberg, 425 Park Avenue, 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 1969 (File No. 13493).

A formal hearing was held before Julius Braun, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 25, 1977 at 9:15 A.M. Petitioners appeared by Leon M. Kerry, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Abraham Schwartz, Esq., of counsel).

ISSUE

Whether legal fees incurred in connection with a court action to void a trust agreement were deductible.

FINDINGS OF FACT

1. Petitioners, Edmund Greene and Helen F.C. Greene, filed a New York State Income Tax Resident Return for the year 1969 on which they claimed a deduction in the amount of \$95,641.04 for legal fees incurred in connection with a court action instituted for the purpose of voiding a trust agreement.

2. On October 30, 1972, as the result of an audit, the Income Tax Bureau issued a Statement of Audit Changes disallowing the legal fees based on the Bureau's contention that "Legal fees and expenses incurred in contracting and breaking a trust are deemed capital expenses and are not deductible". Accordingly, on December 28, 1973, the Bureau issued a Notice of Deficiency against petitioners for additional personal income tax due in the amount of \$13,167.04, plus interest of \$2,924.73, for a total due of \$16,091.83.

3. Helen F.C. Greene, ("Helen") is the granddaughter of Walter P. Chrysler, the founder of the Chrysler motor fortune. During the period commencing with the summer of 1964 through January, 1967, she was institutionalized at the Payne-Whitney New York Hospital, a facility engaged in the treatment of mentally ill persons. At the time she entered Payne-Whitney, she was a college sophomore.

4. John W. Drye, Jr., a long standing attorney of the Chrysler family who had handled various trusts for the family, became aware that Helen was approaching her twenty-first year and that at such time she would inherit an estate in excess of one million dollars.

Mr. Drye drafted a trust agreement and persuaded Helen to execute it on February 5, 1965, while she was a patient at Payne-Whitney. No one else was present. The trust was a unilateral inter vivos trust and irrevocably granted the trustees, Mr. Drye and Manufacturers Hanover Trust Company, the broadest powers possible and the right to administer and invest the trust as fully and freely as an individual owner might do without many of the usual restrictions to which fiduciaries are ordinarily subject. Specifically, the trust indenture provided:

"2. The Trustees shall hold, manage, invest and reinvest the trust estate and shall accumulate the net income and add it to the principal of the trust estate during the life of the Grantor. The Trustees shall pay to the Grantor from time to time during her life so much of the principal of the trust estate as they may deem appropriate for her support, care, comfort, and enjoyment, and they may apply such principal toward the direct benefit of the Grantor in such manner as they may determine."

Helen had not been judicially declared incompetent at the time she executed

the trust agreement.

5. In February, 1967, Helen indicated that she wanted to revoke the trust. When her request was refused, she instituted an action in the Supreme Court, State of New York, County of Essex, to rescind the trust on the ground of lack of understanding and mistake. The court voided the trust agreement holding, in part:

"This is a classroom example of a mistake and misunderstanding on the part of the creator and overreaching on the part of the draftsman-trustee Drye."

6. Petitioners contend that the legal fees at issue were incurred to revoke the trust because Helen was unhappy with the trust's performance. They specifically contend that the trust income was inadequate and that the trust's assets did not appreciate. Petitioners contend that the legal fees are deductible under Section 212 of the Internal Revenue Code, which provides in part that:

"There shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year -

- (1) for the production or collection of income;
- (2) for the management, conservation, or maintenance of property held for the production of income".

7. Subsequent to the revocation of the trust, its assets, which consisted basically of securities, were returned to Helen. She then created a new inter vivos trust in which she was the settlor and a trustee. The other trustee was Theodore J. Greene, the attorney who had represented Helen in the Supreme Court action. Mr. Greene also testified as a witness at the formal hearing held herein.

CONCLUSIONS OF LAW

A. That the litigation to which the legal expenses at issue were attributable was instituted on the ground that petitioner Helen F.C. Greene had misunderstood and had made a mistake in executing the trust, not on the ground of mismanagement by the trustees. Thus, the purpose of the legal action was to gain control of the trust's assets.

B. That the legal expenses claimed are not deductible with the meaning and intent of Section 212 of the Internal Revenue Code.

C. That the petition of Edmund Greene and Helen F.C. Greene is denied and the Notice of Deficiency dated December 28, 1973 is sustained.

DATED: Albany, New York

FEB 22 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER

COMMISSIONER