

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
William H. Taylor - Trust :
Manufacturers Hanover Trust Co., Trustee : 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 Years 1970, 1971 & 1975. :

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 7th day of January, 1980, he served the within notice of Decision by certified mail upon William H. Taylor - Trust, Manufacturers Hanover Trust Co., Trustee, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

William H. Taylor - Trust
Manufacturers Hanover Trust Co., Trustee
350 Park Ave.
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
7th day of January, 1980.

Joanne Knapp

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
William H. Taylor - Trust :
Manufacturers Hanover Trust Co., Trustee : 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 Years 1970, 1971 & 1975. :

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 7th day of January, 1980, he served the within notice of Decision by certified mail upon John F. Rossi 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. John F. Rossi
350 Park Ave.
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
7th day of January, 1980.

Joanne Knapp

J. Vredenburg

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

January 7, 1980

William H. Taylor - Trust
Manufacturers Hanover Trust Co., Trustee
350 Park Ave.
New York, NY 10022

Gentlemen:

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
John F. Rossi
350 Park Ave.
New York, NY 10022
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
TRUST u/w/o WILLIAM H. TAYLOR	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Years	:	
1970, 1971 and 1975.	:	

Petitioner, Trust under the will of William H. Taylor, Manufacturers Hanover Trust Company, Trustee, 350 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 years 1970, 1971 and 1975 (File Nos. 19513 and 19514).

A formal hearing was held before William Valcarcel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on August 24, 1978. Petitioner appeared by Kelley, Drye & Warren, Esqs. (John F. Rossi, Esq., of counsel). The Income Tax Bureau appeared by Peter Crotty, Esq. (Irving Atkins, Esq., of counsel).

ISSUE

Whether petitioner properly subtracted a gain on the sale of Florida real property from Federal taxable income in computing New York taxable income.

FINDINGS OF FACT

1. Petitioner, Trust u/w/o William H. Taylor, filed New York State income tax fiduciary returns for each of the years 1970, 1971 and 1975, on which capital gain income derived from the sale of real property located in the State of Florida was subtracted from Federal taxable income as a New York modification ("gains allocated to principal") resulting in no New York taxable income.

2. On June 5, 1973, the New York State Department of Taxation and Finance validated a signed consent extending the period of limitation for the years 1970 and 1971 to "one year following the proceedings now pending for the year 1967". Notice of the decision of the State Tax Commission in the proceedings for the year 1967 was sent to petitioner on September 26, 1976.

3. On April 14, 1977, the Income Tax Bureau issued a Notice of Deficiency in the sum of \$47,376.38 for 1970 and 1971 and another Notice of Deficiency in the sum of \$97.74 for 1975. The deficiencies were based on the disallowance of the modifications pertaining to the capital gain income which resulted in New York taxable income of \$114,628.60 for 1970, \$131,602.54 for 1971, and \$3,197.43 for 1975.

4. William H. Taylor (hereinafter "decedent") died a resident of New York State on August 26, 1950, and his will was admitted to probate in the Surrogate's Court of Westchester County.

5. By Article Fifteenth of his will the decedent directed that the assets of his residuary estate be placed in trust. The Central Hanover Bank and Trust Company, a predecessor corporation of Manufacturers Hanover Trust Company (hereinafter referred to as the "Bank"), John A. Taylor and Robert H. Taylor received letters of trusteeship with respect to the Article Fifteenth trust from the Westchester County Surrogate's Court.

6. The assets of decedent's residuary estate included real property located in the State of Florida. John A. Taylor, a resident of Florida, was appointed by the County Judges Court, in and for Dade County, Florida as ancillary executor to hold the Florida real property.

7. By an order dated November 16, 1954, the County Judges Court of Dade County Florida approved the final account of the ancillary executor and directed the ancillary executor to a:) transfer the sum of \$3,596.50 and also \$62,000.00

of a United States Certificate of Indebtedness "to the Domiciliary Executors, John A. Taylor, Robert H. Taylor and the Central Hanover Bank & Trust Company"; and b:) "to surrender to John A. Taylor and Robert H. Taylor, as trustees under the will of William H. Taylor, deceased," certain Florida real property which included the real property on which the capital gains at issue were later realized.

8. The Bank did not become a trustee of the Florida real property because the law of Florida prohibited the Bank from being a trustee of Florida real property [Fla. St. Title 36 section 660.10(3)].

9. For the years 1970, 1971 and 1975, John A. Taylor and Robert H. Taylor were the only trustees of the Florida real property.

10. In 1970, 1971 and 1975, John A. Taylor and Robert H. Taylor, trustees of the Florida real property, received payments attributable to the sale of a portion of the Florida real property. These payments were put into a separate account at the Bank in the name of John A. Taylor and Robert H. Taylor, as trustees.

11. John A. Taylor and Robert H. Taylor were not domiciliaries or residents of New York State at any time during 1970 or 1971 or at any time thereafter.

12. Robert H. Taylor and Sandra Wilson were the only income beneficiaries of the trust in 1970, 1971 and 1975 and were not domiciliaries or residents of New York State in 1970 or 1971 or at any time thereafter.

13. Petitioner contends that New York has no jurisdiction to tax such gain since no domiciliary of New York had authority over the Florida property or had the power to bring the gain realized into the State of New York.

CONCLUSIONS OF LAW

A. That the New York taxable income of a resident estate or trust is its Federal taxable income plus or minus certain modifications set forth in section

618 of the Tax Law. Section 618 does not provide for a modification which would permit a resident estate or trust to subtract from Federal taxable income gains derived from the sale of out of state realty. Since the gains on the sale of the Florida real property were included in petitioner's Federal taxable income, they are not to be subtracted or otherwise excluded from New York taxable income.

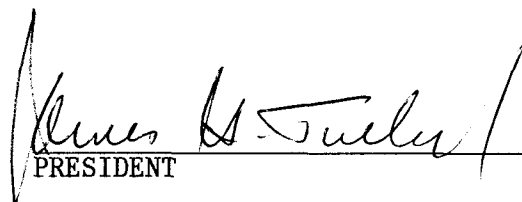
B. That the fact that the Florida real property was sold by ancillary trustees appointed by a Florida court does not shift the taxability of the gain outside New York State.

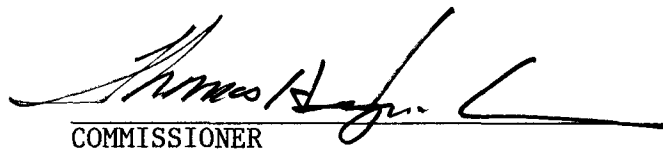
C. That the petition of Trust u/w/o William H. Taylor is denied and the notices of deficiency issued April 14, 1977 for 1970 and 1971 in the sum of \$47,376.38, and for 1975 in the sum of \$97.74 is sustained together with such additional interest as may be lawfully owing.

DATED: Albany, New York

JAN 7 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER

COMMISSIONER