

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :

of

Margaret C. Bam :

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 1967 - 1970. :

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 9th day of January, 1981, he served the within notice of Decision by certified mail upon Margaret C. Bam, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Margaret C. Bam  
221 Elderwood Ave.  
Pelham Manor, NY 10803

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  
9th day of January, 1981.

*Cornie A. Haglund*

*J. Vredenburg*

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of

Margaret C. Bam :

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 1967 - 1970. :

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 9th day of January, 1981, he served the within notice of Decision by certified mail upon Charles M. Hecht 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. Charles M. Hecht  
Charles Hecht & Co.  
595 Madison 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  
9th day of January, 1981.

*Cornelia A. Haglund*

*J. Vredenburg*

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

January 9, 1981

Margaret C. Bam  
221 Elderwood Ave.  
Pelham Manor, NY 10803

Dear Ms. Bam:

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  
Charles M. Hecht  
Charles Hecht & Co.  
595 Madison Ave.  
New York, NY 10022  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

---

In the Matter of the Petition	:	
of	:	
MARGARET C. BAM	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Years	:	
1967, 1968, 1969 and 1970.	:	

---

Petitioner, Margaret C. Bam, 221 Elderwood Avenue, Pelham Manor, New York 10803, 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 1967, 1968, 1969 and 1970 (File No. 12517).

A formal hearing was held before George F. Murphy, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on March 10, 1977 at 9:15 A.M. Petitioner appeared by Charles M. Hecht, CPA. The Audit Division appeared by Peter Crotty, Esq. (Richard Kaufman, Esq., of counsel).

ISSUES

I. Whether petitioner's acceptance of audit adjustments made by the Internal Revenue Service or her failure to contest such adjustments preclude her from establishing that the adjustments, as originally made, were erroneous and should not have been used in determining her New York State income tax liability.

II. Whether moneys received by petitioner, as an assignee of trust income pursuant to a separation agreement, retains the same character in the hands of the petitioner as it would have if received by the assignor, the beneficiary of the trust.

FINDINGS OF FACT

1. Petitioner, Margaret C. Bam, timely filed New York State income tax resident returns for the years 1967 through 1970. On April 26, 1973, petitioner filed notices with the Income Tax Bureau advising it of adjustments to income made by the Internal Revenue Service for the years at issue. In the notices, petitioner claimed that the adjustments, as made, were erroneous and that she had not contested the changes in return for her former husband's reimbursing her, as his taxable income had been reduced by the adjustments.

2. On March 31, 1975, the Income Tax Bureau issued a Notice of Deficiency to petitioner for the years 1967 through 1970 based on the adjustments made by the Internal Revenue Service. The notice asserted additional tax of \$3,014.32, plus interest of \$956.75.

3. On February 28, 1964, Margaret C. Bam entered into a separation agreement with her husband, Foster Bam. Said agreement provided, in part, that Foster Bam assign to petitioner a portion of his beneficial interest in a trust established under the will of Millicent F. Foster. This agreement was subsequently incorporated into a Decree of Divorce dated August 18, 1964.

4. In each of the years at issue, Margaret C. Bam received income in the amount of \$60,000.00 from the trust. A portion of the trust earnings consisted of tax exempt income as follows:

1967	-	\$5,576.00
1968	-	\$5,597.00
1969	-	\$5,681.00
1970	-	\$6,233.00

5. Petitioner contended that the above amounts of tax exempt income should be excluded from her taxable income pursuant to section 682(b) of the Internal Revenue Code.

CONCLUSIONS OF LAW

A. That section 659 of the Tax Law provides, in part, that a taxpayer is required to report changes made by the Internal Revenue Service and concede the accuracy of the change or state wherein it is erroneous. Petitioner's acceptance of the audit adjustments made by the Internal Revenue Service does not preclude her right to show that said adjustments were erroneous.

B. That the amounts petitioner received as assignee of a portion of the income of the Trust under the will of Millicent F. Foster were payments for her maintenance and support pursuant to a divorce decree incorporating a separation agreement and, therefore, do not retain the same character in her hands as in the hands of the assignor. Said amounts constitute alimony payments under section 71 of the Internal Revenue Code and, as such, are includable in their entirety. Section 682(b) of the Code is applicable to said payments made to a former spouse merely for the purpose of applying the rules of trust accounting (Rev. Rul. 65-283, 1965-2 CB 25).

C. That the petition of Margaret C. Bam is denied, and the Notice of Deficiency issued on March 31, 1975 is sustained.

DATED: Albany, New York

JAN 09 1981

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER