

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Estate of Cecil Fredericks :
Agatha Serrant, Executrix :
: 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 :
1971, 1972 & 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 5th day of June, 1981, he served the within notice of Decision by certified mail upon Estate of Cecil Fredericks, Agatha Serrant, Executrix the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Estate of Cecil Fredericks
Agatha Serrant, Executrix
854 E. 228th St.
Bronx, NY 10466

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
5th day of June, 1981.

Connie A. Hagelund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Estate of Cecil Fredericks :
Agatha Serrant, Executrix :

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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 5th day of June, 1981, he served the within notice of Decision by certified mail upon Sidney Eagle 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. Sidney Eagle
Eagle & Fein
363 Seventh Ave.
New York, NY 10001

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
5th day of June, 1981.

Conni A. Haglund

J. Vredenburg

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

June 5, 1981

Estate of Cecil Fredericks
Agatha Serrant, Executrix
854 E. 228th St.
Bronx, NY 10466

Dear Ms. Serrant:

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
Sidney Eagle
Eagle & Fein
363 Seventh Ave.
New York, NY 10001
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
ESTATE OF CECIL FREDERICKS	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax	:	
under Article 22 of the Tax Law for the	:	
Years 1971, 1972 and 1975.	:	

Petitioner, Estate of Cecil Fredericks, c/o Agatha Serrant, Executrix, 854 East 228th Street, Bronx, New York, 10466, 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 1971, 1972 and 1975 (File No. 19654).

A formal hearing was held before Edward L. Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 16, 1979 at 1:42 P.M. Petitioner appeared by Eagle & Fein (Sidney Eagle, Esq., of counsel). The Audit Division appeared by Peter Crotty, Esq. (Bruce Zalaman, Esq., of counsel). The hearing was continued on January 10, 1980 at 1:20 P.M. but was adjourned without the introduction of any evidence. It was continued on May 28, 1980 at 9:50 A.M. before Stanley Buchsbaum, Hearing Officer. Petitioner appeared by the same counsel. The Audit Division appeared by Ralph J. Vecchio, Esq. (Samuel J. Freund, Esq., of counsel).

ISSUE

Whether the Income Tax Bureau properly asserted a deficiency in personal income tax for 1975 against the Estate of Cecil Fredericks on the basis of monies recovered by the police when they apprehended his murderer, the money having been turned over to the Fredericks estate.

FINDINGS OF FACT

1. Cecil Fredericks was murdered on January 31, 1975. When the murderer was apprehended in Switzerland, he had \$64,554.00 in cash.
2. Later the Police Department turned over \$69,578.48 to Cecil Fredericks' estate. The additional amount of \$5,024.48 was money taken from Cecil Fredericks on April 11, 1973, when he was arrested for a traffic violation and for a gambling crime.
3. On January 31, 1977, the Audit Division issued to the Estate of Cecil Fredericks a Statement of Audit Changes for additional taxes due, plus interest. The additional taxes were: \$885.40 for 1971; \$2,591.47 for 1972; and \$8,558.00 for 1975. The deficiency for 1975 was based on the full \$69,578.48 turned over to the estate by the police. On June 27, 1977 a Notice of Deficiency was issued in the same principal amounts, plus interest. The interest was: for 1971, \$276.21; for 1972, \$816.31; and for 1975, \$872.91.
4. At the January 10, 1980 hearing, counsel for the estate conceded liability for the deficiencies found for 1971 and 1972.
5. Cecil Fredericks' income tax returns for the years 1971 through 1974 listed his occupation as "clerk".
6. His income tax return for 1971 showed adjusted gross income of \$7,525.00, which included interest income of \$689.00. For 1972 the adjusted gross income shown was \$9,581.00, including interest of \$727.00. For 1973, the adjusted gross income shown was \$17,613.00, including \$760.00 of interest income and \$4,853.00 of other income. For 1974, the adjusted gross income shown was \$18,358.00, including \$850.00 of interest income and \$4,500.00 of other income.
7. After he was arrested on the gambling charge, the United States Internal Revenue Service audited Cecil Fredericks' tax returns for the years 1971 and 1972. It found additional income in the amounts of \$13,200.00 for

1971 and of \$24,455.00 for 1972. The New York deficiencies for 1971 and 1972 referred to in Paragraphs 3 and 4 were based on this federal finding of additional income.

8. The only evidence of bank deposits or withdrawals in the record is a copy of Mr. Fredericks' deposits in and withdrawals from a bank account in the Bank of Commerce between May 19, 1971 and June 25, 1974. It shows that on May 19, 1974, Cecil Fredericks had a balance of \$11,806.62. On May 19, 1971, he deposited an additional \$3,100.00. Interest increased the total amount to \$17,756.35 by June 25, 1974. On that day he withdrew \$10,000.00. Apparently the account was inactive thereafter.

9. The Audit Division determined the amount of the tax deficiency for 1975 by the "cash availability" method. This involves ascertaining all income, including withdrawals from banks, and determining "cash out" by including bank deposits, taxes paid and monies spent for food, clothing, entertainment and all other expenses. With regard to expenditures it is an estimate, depending on the person's mode of living. In the instant case there was no investigation of the cash on hand or when or how it was acquired because of a disagreement between the auditor and the representative of the Fredericks' estate. The audit was completed on the basis of the information available without considering whether there was cash on hand from prior years. Originally the auditor attributed the amount of money he believed to have been recovered from the murder to the year 1974 because he did not believe that so much money would have been earned in the short period of 1975 before Mr. Fredericks' death. Finally he took that money and treated it as income for 1975 in the amount of \$69,578.48.

CONCLUSIONS OF LAW

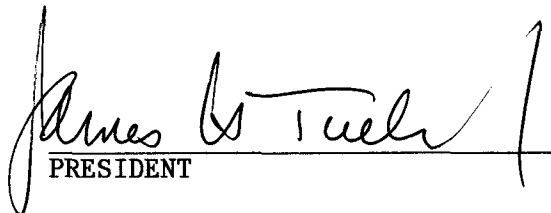
A. That the largest amount of monies that could possibly be considered as income of Cecil Fredericks in 1975 is \$64,554.00 since the additional \$5,024.48 turned over to the estate by the police was the amount taken by them from Mr. Fredericks when he was arrested on a gambling charge in 1973.

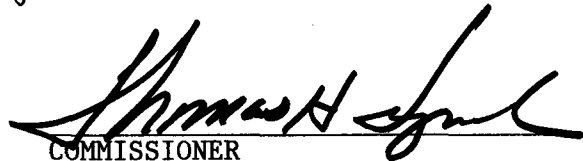
B. That the "cash availability" method of income reconstruction is a variant of the net worth method. The courts have held that in applying such methods it is essential that the taxing authority make a determination of the taxpayer's opening net worth. Phillips' Estate v. Comm. of Int. Rev., 246 F.2d 209; Harp v. Comm., 169 F. Supp. 947; William J. Jacobs, Jr., TC Memo 1974-73. Cf. Holland v. United States, 348 U.S. 121. See 2 Mertens, Law of Federal Taxation, §12-12. This was not done in the present case. Accordingly, the petition of the Estate of Cecil Fredericks is granted to the extent that the 1975 portion of the Notice of Deficiency of June 27, 1977 is cancelled. That except as so granted the petition is in all other respects denied.


DATED: Albany, New York

STATE TAX COMMISSION

JUN 5 1981


PRESIDENT


COMMISSIONER


COMMISSIONER