

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Sarah Korein, Indiv. and as Executrix of :
The Estate of Isidor Korein :
: 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 :
1969 & 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 25th day of September, 1981, he served the within notice of Decision by certified mail upon Sarah Korein, Indiv. and as Executrix of, The Estate of Isidor Korein the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Sarah Korein, Indiv. and as Executrix of
The Estate of Isidor Korein
240 Central Park South
New York, NY 10019

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
25th day of September, 1981.

[Signature of Jay Vredenburg]
[Signature of Annie R. Hayelund]

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Sarah Korein, Indiv. and as Executrix of :
The Estate of Isidor Korein :
: 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
1969 & 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 25th day of September, 1981, he served the within notice of Decision by certified mail upon Lawrence N. Friedland the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Lawrence N. Friedland
10 East 53rd St.
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
25th day of September, 1981.

Annie A. Hagelund

J. Vredenburg

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

September 25, 1981

Sarah Korein, Indiv. and as Executrix of
The Estate of Isidor Korein
240 Central Park South
New York, NY 10019

Dear Mrs. Korein:

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
Lawrence N. Friedland
10 East 53rd St.
New York, NY 10022
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
SARAH KOREIN, Individually and as Executrix : DECISION
of THE ESTATE OF ISIDOR KOREIN:
for Redetermination of a Deficiency or for :
Refund of Personal Income Tax under Article 22 :
of the Tax Law for the Years 1969 and 1970. :

Petitioner, Sarah Korein, individually and as executrix of the Estate of Isidor Korein, 240 Central Park South, New York, New York 10019, 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 1969 and 1970 (File No. 12178).

A formal hearing was held before Edward Goodell, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 27, 1979 at 1:15 P.M. Petitioner appeared by Lawrence N. Friedland, Esq. The Audit Division appeared by Peter Crotty, Esq. (Irwin Levy, Esq., of counsel).

ISSUES

I. Whether, as to the taxable year 1969, the Audit Division properly adjusted the item of capital gain by the sum of \$11,050.00, thereby increasing the taxable income for said year from \$71,926.88 to \$82,976.88.

II. Whether, as to the taxable year 1970, the Audit Division properly disallowed claimed charitable contributions as deductions totaling \$10,840.00.

III. Whether, as to the taxable year 1970, the Audit Division properly disallowed miscellaneous deductions totaling \$203,393.48.

FINDINGS OF FACT

1. Petitioner, Sarah Korein, and her husband, Isidor Korein (now deceased), timely filed a New York State Combined Income Tax Return for 1969 and a joint New York State Income Tax Resident Return for 1970.

Isidor Korein died on May 27, 1976 and petitioner, Sarah Korein, was appointed executrix of his estate.

2. Petitioner, Sarah Korein, and said decedent, Isidor Korein, duly executed a consent extending the period of limitation for the assessment of personal income taxes for the taxable years 1969 and 1970 to April 15, 1975.

3. On September 11, 1974, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Sarah Korein, and her husband, decedent Isidor Korein, for additional New York State income tax due for the year 1969 in the sum of \$1,547.01 and for additional New York State income tax due for the year 1970 in the sum of \$31,963.15. On April 14, 1975, the Income Tax Bureau issued a Notice of Deficiency to petitioner Sarah Korein and her husband, Isidor Korein, for the tax years 1969 and 1970, asserting tax deficiencies for said years totaling \$33,510.16, together with interest thereon of \$8,132.91.

4. Petitioner and her said husband, Isidor Korein, timely filed a petition, sworn to July 11, 1975, for redetermination of deficiency or for refund of personal income tax for the tax years 1969 and 1970.

Subsequent to the death of Isidor Korein, Sarah Korein filed a perfected petition individually and as executrix of Estate of Isidor Korein for redetermination of deficiency or for refund of personal income tax for the tax years 1969 and 1970, which said petition was based on the same grounds as the aforesaid prior petitions, sworn to July 11, 1975, except that it did not include ground numbered "iv" of the prior petition.

5. Petitioner and her husband, Isidor Korein, were engaged in the business of real estate investments.

6. (a) The decedent, Isidor Korein, and one Leon Salwyn were the sole stockholders of Burbank Realty Corp., a New York corporation, incorporated in 1955, for the purpose of owning and operating real estate.

(b) Schedule D of Federal Form 1040 for the year 1969, filed on behalf of petitioners, showed a long-term capital gain computed on a cost basis of \$22,100, resulting from "distributions received in complete liquidation of Burbank Realty Corp.".

(c) The aforesaid Notice of Deficiency issued April 14, 1975, disallowing the said cost basis of \$22,100, adjusted the capital gain of Isidor Korein for the year 1969 by the sum of \$11,050.00, thereby increasing taxable income for the year 1969 from \$71,926.88 to \$82,976.88 and, accordingly, asserting additional New York State tax due for 1969 of \$1,547.01.

(d) The 1967 United States Corporation Income Tax Return of Burbank Realty Corp., prepared by Harris, Kerr, Forster & Company, certified public accountants, stated in Schedule L thereof that the total amount of the capital stock of said corporation was the sum of \$28,900; and the information furnished by the said accountants to the said Isidor Korein in connection with their "instructions" to him "for filing New York State Tax Returns" for the "year ended 5/31/68", stated that his interest in Burbank Realty Corp. was 76.5 percent thereof.

(e) Based upon the aforesaid tax return and information described in subparagraph (d) above, it was conceded at the formal hearing herein by counsel for the Audit Division that the petitioner had established the basis for the capital gain in 1969.

7. (a) Schedule B of the joint New York State Income Tax Resident Return of petitioner and decedent, Isidor Korein, for the tax year 1970, claimed the sum of \$10,840 as a deduction for contributions, which said deduction was disallowed by the Notice of Deficiency issued April 14, 1975, thereby asserting an increase in taxable income for the tax year 1970 by said sum of \$10,840.

(b) Counsel for the petitioner was accorded additional time at the aforesaid formal hearing to submit to counsel for the Audit Division, checks substantiating said deductions of \$10,840 for contributions and also to submit to him evidence establishing the tax exempt status of certain organizations to which it was claimed contributions had been made as aforesaid, which said checks and documentation would then be forwarded to the Hearing Officer herein for his examination and consideration.

(c) By letter dated March 12, 1981 addressed by counsel for the Audit Division to the Hearing Officer herein, a copy of which said letter was sent to counsel for the petitioner, the said Hearing Officer was "advised that this office has not received any supporting documentation that the petitioner's attorney had volunteered to submit at the hearing in the above matter."

8. Petitioner and decedent, Isidor Korein, claimed "Miscellaneous Deductions" totaling \$203,393 in their joint New York State Income Tax Resident Return for the tax year 1970. Said sum, claimed to be deductible as a fraud loss, and disallowed in the Notice of Deficiency issued April 14, 1975, is based on the following claims:

(a) Petitioner and her brother, Eli Rabin, were engaged as partners in the business of real estate investments. Eli Rabin died on August 8, 1964.

(b) It is claimed by the petitioner that subsequent to his death, she discovered that she had been defrauded by him to the extent of said sum of

\$203,393 in connection with various real estate ventures in which she and her said brother had been involved as partners.

(c) One of the real estate ventures in which the petitioner and Eli Rabin were partners was Park House Realty Co., with offices located at 12 East 86th Street. Petitioner claims that a check, dated June 8, 1960, made payable to her order for the sum of \$50,000 by Park House Realty Co., and signed by Eli Rabin on behalf of the maker, representing part of her distributive share of the proceeds of sale of the property owned by Park House Realty Co., was never received by her and that her name was fraudulently endorsed thereon.

(d) It is further claimed by the petitioner that after the death of her said brother, Eli Rabin, she caused a review to be made of her accounts with him and that it was reported to her that she had been defrauded in the amount of \$146,055.55 in relation to the various partnerships in which she and her brother had been involved in addition to the aforesaid check for \$50,000 or, allegedly, a total of \$196,055.55.

9. (a) It appears that the petitioner commenced a proceeding in the Surrogate's Court, Kings County, against the Estate of Eli Rabin to recover the monies she claimed to be due to her and, parallel to that proceeding, also instituted an arbitration proceeding before the American Arbitration Association against the said estate. It also appears that at approximately the same time the Estate of Eli Rabin commenced an action against Sarah Korein in the Supreme Court, New York County, for an accounting.

(b) No judgment of any court or determination of any arbitral tribunal was offered or introduced in evidence in this proceeding by or on behalf of the petitioner with respect to the claim made by petitioner in this proceeding that she suffered a loss of \$196,055.55 as aforesaid or of any part thereof.

10. (a) In December 1970, approximately six years after the commencement of the proceedings and action mentioned in paragraph "9" above, a settlement thereof was effected pursuant to written agreement of settlement by and between the petitioner and the Estate of Eli Rabin.

(b) Neither said settlement agreement nor a copy thereof was produced on behalf of the petitioner at the formal hearing herein, but counsel for the petitioner stated at said hearing that he would attempt to find a final copy thereof and send it to counsel to the Audit Division, together with the checks referred to in paragraph "7" above. Counsel for the Audit Division stated in his aforesaid letter to the Hearing Officer herein, dated March 12, 1981, that he had not received "any supporting documentation".

(c) Counsel for the petitioner stated at the formal hearing herein that "the action was settled by her purchasing the assets of the estate and she gave up her claims" and again, that "the agreement just states, and this I remember the full thing, states that the parties will terminate all actions, Mrs. Korein will buy out certain properties, the partnership interest that the Rabins had with her, and that was it."

(d) While said settlement agreement is not part of the record herein, it appears from responses and statements made by counsel for the petitioner herein, that in reaching an agreement concerning the price paid by the petitioner for the properties or interest acquired by her from the Estate of Eli Rabin that "some fair consideration" was given to her claim, although that consideration, it was stated by petitioner's counsel, was not explicitly set forth in the said settlement agreement.

11. Petitioner Sarah Korein was not present at the formal hearing herein, counsel for the petitioner stating that she "was too sick to come down and we thought we would try it this way".

CONCLUSIONS OF LAW

A. That petitioners the Estate of Isidor Korein and Sarah Korein have sustained their burden of proof that the cost basis of the interest of the decedent, petitioner Isidor Korein, in the Burbank Realty Co., was \$22,100. Accordingly, the Notice of Deficiency issued April 14, 1975 should not have increased the taxable income of petitioner Isidor Korein for the tax year 1969 by the sum of \$11,050.

B. That petitioner Sarah Korein has not sustained the burden of proof imposed by section 689(e) of the Tax Law in showing that she and decedent Isidor Korein were entitled to a deduction for claimed charitable contributions for the tax year 1970.

C. That petitioner Sarah Korein has not sustained the burden of proof imposed by section 689(e) of the Tax Law in showing that she and decedent Isidor Korein were entitled to a miscellaneous deduction of \$203,393 or any part thereof for the tax year 1970.

D. That the petition of Sarah Korein, individually and as executrix of the Estate of Isidor Korein is granted to the extent indicated in Conclusion of Law "A". The Audit Division is hereby directed to accordingly modify the Notice of Deficiency issued April 14, 1975 and that, except as so granted, the

petition is in all other respects denied and the said Notice of Deficiency is
in all other respects sustained.

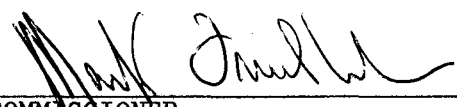
DATED: Albany, New York

SEP 25 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER