

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Bertha Simensky :  
: 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 :  
1975. :

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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 14th day of August, 1981, he served the within notice of Decision by certified mail upon Bertha Simensky, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Bertha Simensky  
9801 Collins Ave. Apt. 10-V  
Bal Harbour, FL 33154

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  
14th day of August, 1981.

*Garnie A. Hagelund*

*J. Vredenburg*

STATE OF NEW YORK  
STATE TAX COMMISSION

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Bertha Simensky :  
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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 14th day of August, 1981, he served the within notice of Decision by certified mail upon David J. Rabbach the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

David J. Rabbach  
850 Third 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  
14th day of August, 1981.

*Annex G. Hagelauer*

*J. Vredenburg*

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

August 14, 1981

Bertha Simensky  
9801 Collins Ave. Apt. 10-V  
Bal Harbour, FL 33154

Dear Ms. Simensky:

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  
David J. Rabbach  
850 Third Ave.  
New York, NY 10022  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
BERTHA SIMENSKY	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22 :	:	
of the Tax Law for the Year 1975.	:	

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Petitioner, Bertha Simensky, 9801 Collins Avenue, Apt 10-V, Bal Harbour, Florida 33154, 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 1975 (File No. 24289).

On October 14, 1980, petitioner advised the State Tax Commission, in writing, that she desired to waive a small claims hearing and to submit the case to the State Tax Commission, based on the entire record contained in the file.

ISSUE

Whether petitioner, as beneficiary of the Estate of Rubin Simensky, was required to report the income derived from said estate during taxable year 1975.

FINDINGS OF FACT

1. Bertha Simensky (hereinafter petitioner) filed a New York State Income Tax Resident Return for the year 1975.

2. On July 15, 1977, the Audit Division issued a Statement of Audit Changes to petitioner wherein an adjustment was made increasing her New York taxable income by \$29,502.00. Such amount represented income of \$26,334.00 distributed to petitioner during 1975 from the Estate of Rubin Simensky (the

Estate), plus a fiduciary adjustment of \$3,168.00. In recomputing petitioner's tax liability per said statement, she was given credit for the taxes paid on said income by the Estate of \$2,630.00. Accordingly, a Notice of Deficiency was issued against petitioner on September 15, 1978, asserting additional personal income tax of \$1,480.43, plus interest of \$304.07, for a total due of \$1,784.50.

3. Petitioner contended that the income she derived from the Estate, which terminated at the close of its fiscal year ended September 30, 1975, was distributed to her in October 1975. As such, she maintained that since the Estate did not distribute its income until after the end of its fiscal year, the Estate, rather than the petitioner, is the entity that is properly taxable on such income.

4. No documentary evidence was submitted to establish the date petitioner actually received the distributed income from the Estate since she contended that the Estate's financial records for the period at issue could not be located.

#### CONCLUSIONS OF LAW

A. That section 662(c) of the Internal Revenue Code states that:

"If the taxable year of a beneficiary is different from that of the estate or trust, the amount to be included in the gross income of the beneficiary shall be based on the distributable net income of the estate or trust and the amounts properly paid, credited or required to be distributed to the beneficiary during any taxable year or years of the estate or trust ending within or with his taxable year."

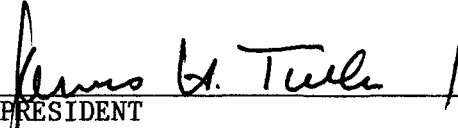
Accordingly, the income derived by petitioner from the Estate of Rubin Simensky is taxable to her personally during 1975.

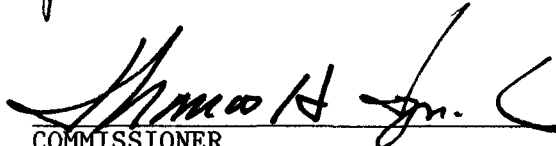
B. That the petition of Bertha Simensky is denied and the Notice of Deficiency dated September 15, 1978 is sustained, together with such additional interest as maybe lawfully owing.


DATED: Albany, New York

STATE TAX COMMISSION

AUG 14 1981

  
\_\_\_\_\_  
PRESIDENT

  
\_\_\_\_\_  
COMMISSIONER

  
\_\_\_\_\_  
COMMISSIONER