

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Elizabeth H. Todd, Individ. & as Executrix :
of the Estate of Gordon B. Todd (dec'd) : 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 1960 - 1963. :

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 2nd day of March, 1981, he served the within notice of Decision by certified mail upon Elizabeth H. Todd, Individ. & as Executrix, of the Estate of Gordon B. Todd (dec'd), the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Elizabeth H. Todd, Individ. & as Executrix
of the Estate of Gordon B. Todd (dec'd)
c/o Hawkins, Delafield & Wood
67 Wall St.
New York, NY 10005

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
2nd day of March, 1981.

Carrie P. Hagelund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Elizabeth H. Todd, Individ. & as Executrix :
of the Estate of Gordon B. Todd (dec'd) : 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 1960 - 1963. :

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 2nd day of March, 1981, he served the within notice of Decision by certified mail upon James R. Eustis 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. James R. Eustis
Hawkins, Delafield & Wood
67 Wall St.
New York, NY 10005

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
2nd day of March, 1981.

Annie A. Hagellund

J. Vredenburg

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

March 2, 1981

Elizabeth H. Todd, Indiv. & as Executrix
of the Estate of Gordon B. Todd (dec'd)
c/o Hawkins, Delafield & Wood
67 Wall St.
New York, NY 10005

Dear Ms. Todd:

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
James R. Eustis
Hawkins, Delafield & Wood
67 Wall St.
New York, NY 10005
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
ELIZABETH H. TODD, Individually and as	:	DECISION
Executrix of the Estate of GORDON B. TODD,	:	
Deceased	:	
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Taxes under Article 22	:	
of the Tax Law for the Years 1960 through 1963.	:	

Elizabeth H. Todd, individually and as executrix of the estate of Gordon B. Todd, c/o Hawkins, Delafield & Wood, Esqs., 67 Wall Street, New York, New York 10005, filed a petition for redetermination of a deficiency or for refund of personal income taxes under Article 22 of the Tax Law for the years 1960 through 1963 (File No. 20311).

On February 4, 1980, petitioner, by Hawkins, Delafield & Wood, Esqs. (James R. Eustis, Jr., Esq., of counsel) and the Audit Division, by Ralph J. Vecchio, Esq. (Frank Levitt, Esq., of counsel) executed a Consent to Submission without Hearing, the matter to be determined on the basis of facts set forth in the Stipulation of Facts, submitted by petitioner and deemed stipulated by order of the State Tax Commission, December 19, 1979.

ISSUE

Whether the taxpayer, on her own and her deceased husband's behalf, may change their filing status election from filing jointly to filing separately, and in accordance with such election, divide equally between them dividends and capital gains from securities.

FINDINGS OF FACT

1. Gordon B. Todd (the "decedent") and Elizabeth H. Todd, the petitioner herein, filed joint personal income tax returns for the years 1960 through 1963, showing joint personal income tax liabilities as follows:

<u>TAXABLE YEAR</u>	<u>TAX PER RETURN AS FILED</u>
1960	\$7,255.00*
1961	4,193.00
1962	841.00
1963	1,392.00

* \$6,895.00 per return, plus \$360.00 per audit adjustments.

2. On December 20, 1976, the Audit Division issued a Statement of Audit Changes and a Notice of Deficiency against petitioner individually and as executrix of the estate of the decedent, imposing additional personal income taxes for the years 1960 through 1963 in the amount of \$4,672.00, together with interest thereon of \$3,843.27, scheduled as follows:

<u>TAXABLE YEAR</u>	<u>DEFICIENCY</u>	<u>INTEREST</u>
1960	\$ 378.00	\$ 355.63
1961	1,123.00	989.16
1962	1,432.00	1,175.41
1963	1,739.00	1,323.07
	<u>\$4,672.00</u>	<u>\$3,843.27</u>

The above deficiencies were asserted by reason of : (a) the disallowance in each such year of a deduction for certain interest expenses; and (b) adjustments, denominated in Schedule D annexed to the Notice of Deficiency as "adjustments per refund voucher," for the year 1960.

3. (a) On March 14, 1977, petitioner filed a petition for redetermination of a deficiency in personal income taxes, conceding the aforementioned disallowances and adjustments but asserting the right to refile separate returns in her own and decedent's behalf for each of the years at issue. Petitioner recomputed the underpayments of tax, based on the separate tax liabilities of petitioner and decedent, as follows:

<u>TAXABLE YEAR</u>	<u>RECOMPUTATION OF UNDERPAYMENT</u>		<u>TOTAL</u>
	<u>PETITIONER</u>	<u>DECEDENT</u>	
1960	\$ 139.00	\$ -	\$ 139.00
1961	243.00	240.00	483.00
1962	221.00	597.00	818.00
1963	676.00	423.00	1,099.00
	<u>\$1,279.00</u>	<u>\$1,260.00</u>	<u>\$2,539.00</u>

(b) Petitioner contended that dividends and capital gains were properly divided in equal proportion between her and decedent. All transactions were made, and all securities held, in the name of Gordon B. Todd & Company, which entity, petitioner claimed, was always considered by them to be equally owned. It had been petitioner's custom throughout her long marriage to decedent to give to him any sum of money she accumulated in order that he might invest such sum for both of them. Mr. Todd maintained an office from which he traded in securities and engaged in option activity for the joint account of himself and petitioner. Also, petitioner and decedent each had, in the books of Gordon B. Todd & Co., drawing accounts which were used to pay the taxes and living expenses of both Todds.

(c) Petitioner asserted that rental income (actually losses) was properly attributed to her as owner of the real property which was the source thereof; and further, that income from estates or trusts was income payable to her from a trust established under the will of her father, Frank Healy.

CONCLUSIONS OF LAW

A. That petitioner, on her own and decedent's behalf, may change the filing status election for the years 1960 through 1963 from joint to separate personal income tax returns in accordance with section 660 of the Tax Law, which permits any election authorized by Article 22 to be changed upon such terms and conditions as prescribed by the regulations of the Commission, and in accordance with section 651(b) which provides in pertinent part:

"(2) If the federal income tax liabilities of husband and wife... are determined on a joint federal return...

(B) they may elect to file separate New York income tax returns on a single form if they comply with the requirements of the tax commission in setting forth information, in which event their tax liabilities shall be separate..."

See also Matter of Sanford P. and Delia C. Temes, State Tax Commission, January 24, 1979.

B. That for purposes of tax computation, the Internal Revenue Code permits a husband and wife who file a joint Federal return to split their income and compute the tax thereon at a lower rate. Article 22 of the Tax Law does not include a similar provision, nor does Federal conformity extend to the tax computation. Therefore, a husband and wife may not determine their New York personal income tax liability, on either joint or separate returns, on the basis of apportioning their combined income equally between them.

C. That insofar as decedent undertook all the securities transactions which yielded the dividend and capital gain income at issue and in effect functioned as "Gordon B. Todd & Company", said income was attributable to him and could not be the subject of income-splitting on the amended combined returns filed by petitioner on their behalf. Petitioner submitted a copy of a letter which he sent to the Securities and Exchange Commission on July 20, 1962, in which he requested that his registration as a broker/dealer, d/b/a Gordon B. Todd & Co., a partnership be withdrawn. Petitioner had requested such registration on May 28, 1962. Other than said letter, petitioner produced no evidence that Gordon B. Todd and Company constituted a partnership, permitting petitioner and decedent as partners to share income, gain or loss derived therefrom. Cf. Matter of Israel H. Friedland, State Tax Commission, June 18, 1980.

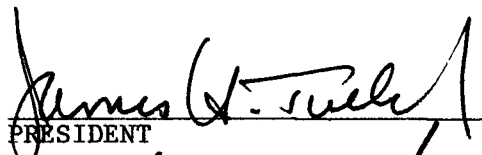
D. That petitioner may, on the combined returns for 1960 and 1963, attribute to herself for purposes of computing personal income tax liability the rental income from her real property and the income she received from the testamentary trust established by her father.

E. That the petition of Elizabeth H. Todd, individually and as executrix of the estate of Gordon B. Todd, is granted to the extent indicated in Conclusion of Law "D"; that the Notice of Deficiency issued December 20, 1976 asserting additional personal income taxes for the years 1960 through 1963 is to be modified accordingly; and that except as so modified, the deficiency is in all other respects sustained.

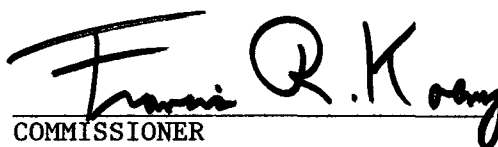
DATED: Albany, New York

STATE TAX COMMISSION

MAR - 2 1981


PRESIDENT


COMMISSIONER


COMMISSIONER