

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of  
Estate of James Lee : 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 :  
1974.

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State of New York  
County of Albany

Kathy Pfaffenbach, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 24th day of January, 1983, she served the within notice of Decision by certified mail upon Estate of James Lee, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Estate of James Lee  
c/o C. Earl Russell, Co-Executor  
50 Congress St., Rm. 800  
Boston, MA 02109

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  
24th day of January, 1983.

Kathy Pfaffenbach

Conna A. Hapgood

AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

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of :  
Estate of James Lee : AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :  
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Tax under Article 22 of the Tax Law for the Year :  
1974.

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State of New York  
County of Albany

Kathy Pfaffenbach, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 24th day of January, 1983, she served the within notice of Decision by certified mail upon Irwin M. Goodstein the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Irwin M. Goodstein  
Reynolds, Richards, Laventure, Hadley & Davis  
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  
24th day of January, 1983.

Kathy Pfaffenbach

James A. Hagelmaier

AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174

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

January 24, 1983

Estate of James Lee  
c/o C. Earl Russell, Co-Executor  
50 Congress St., Rm. 800  
Boston, MA 02109

To the Executors:

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  
Law Bureau - Litigation Unit  
Albany, New York 12227  
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Irwin M. Goodstein  
Reynolds, Richards, Laventure, Hadley & Davis  
67 Wall St.  
New York, NY 10005  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
ESTATE OF JAMES LEE	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1974.	:	

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Petitioner, Estate of James Lee, c/o C. Earl Russell, Co-Executor, 50 Congress Street, Room 800, Boston, Massachusetts 02109, 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 1974 (File No. 23226).

A formal hearing was held before Robert A. Couze, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 23, 1981 at 9:30 A.M. Petitioner appeared by Reynolds, Richards, La Venture, Hadley & Davis, Esqs. (Irwin M. Goodstein, Esq., of counsel). The Audit Division appeared by Ralph J. Vecchio, Esq. (William Fox, Esq., of counsel).

ISSUE

Whether the Audit Division properly asserted a deficiency against the decedent for the tax year 1974 for its distributive share of partnership income and long-term capital gain although said shares were not actually distributed during the year 1974.

FINDINGS OF FACT

1. On April 4, 1978 the Audit Division issued a Notice of Deficiency against the Estate of James Lee in the sum of \$12,401.07, plus interest, for the year 1974.

2. The Statement of Audit Changes, herein, dated February 1, 1978, asserted that the deficiency is based on the following:

(a) that decedent failed to report partnership income of \$12,600.00 and a long-term capital gain distribution of \$114,406.23 from W. E. Hutton & Co., and

(b) that as a result the decedent was subject to the 20 percent capital gain modification and New York State minimum income tax.

3. The decedent was a retired general partner in the firm of W. E. Hutton & Co., investment bankers and stockbrokers, of 14 Wall Street, New York, New York. On November 29, 1972, decedent submitted his written resignation as a general partner effective December 31, 1972. Decedent died December 12, 1972, and, in accordance with the provisions of the partnership agreement, he was deemed to have retired as of December 31, 1972. At the time of his death, decedent was a resident of the State of New York.

4. For the year in issue, W. E. Hutton & Co. allocated the following income to decedent:

(a) \$114,406.23 long-term capital gain

(b) \$ 12,600.00 income

5. The allocated income was reported on both the Federal and the State Partnership Returns for the year 1974; however, petitioner contended that it did not report said income for 1974 because it did not receive the income. Further, petitioner maintained that it was not likely that it would ever receive the allocated income because W. E. Hutton & Co. went into liquidation on July 3, 1974 and it was anticipated that payments of debts and liquidation expenses would far exceed partnership assets and that, accordingly, there would be no ultimate recovery to the partners with respect to their capital account.

CONCLUSIONS OF LAW

A. That 20 NYCRR 119.1 provides that "[a] partnership itself does not pay a New York State personal income tax, but the individual partners are taxed on their respective distributive shares of the partnership income, whether or not such shares are actually distributed to them". Accordingly, petitioner is liable for tax on its distributive share, even though it was not received.

B. That the petition herein is denied and the Notice of Deficiency, herein, dated April 4, 1978 is sustained.

DATED: Albany, New York

JAN 24 1983

STATE TAX COMMISSION

*Robert W. Barcland*  
ACTING PRESIDENT

*Francis Q. Koening*  
COMMISSIONER

*Mark J. Dwyer*  
COMMISSIONER