

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
Josephine D. Potter	:	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	:	
1973.	:	

State of New York
County of Albany

David Parchuck, 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 15th day of April, 1983, he served the within notice of Decision by certified mail upon Josephine D. Potter, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Josephine D. Potter
620 Old Sleepy Hollow Rd.
Briarcliff, NY 10510

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
15th day of April, 1983.





AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

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of :
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1973. :

State of New York
County of Albany

David Parchuck, 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 15th day of April, 1983, he served the within notice of Decision by certified mail upon Jack Prisamt the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Jack Prisamt
3 Sparrow Circle
White Plains, NY 10605

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
15th day of April, 1983.

David Parchuck

James R. Vogel
AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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

April 15, 1983

Josephine D. Potter
620 Old Sleepy Hollow Rd.
Briarcliff, NY 10510

Dear Ms. Potter:

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
Jack Prisamt
3 Sparrow Circle
White Plains, NY 10605
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
JOSEPHINE D. POTTER
for Redetermination of a Deficiency or for
Refund of Personal Income Tax under Article 22
of the Tax Law for the Year 1973.

DECISION

Petitioner, Josephine D. Potter, 620 Old Sleepy Hollow Road, Briarcliff, New York 10510, 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 1973 (File No. 20908).

A small claims hearing was held before Allen Caplowaith, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on September 21, 1981 at 2:45 P.M. Petitioner appeared by Jack Prisamt, CPA. The Audit Division appeared by Ralph J. Vecchio, Esq. (Thomas Sacca, Esq., of counsel).

ISSUE

Whether petitioner is properly entitled to a refund based on an alleged duplication of income reported on her 1973 return.

FINDINGS OF FACT

1. Josephine D. Potter (hereinafter petitioner) timely filed a New York State Income Tax Resident Return for the year 1973 whereon she reported income of \$9,414.04 derived from an item categorically described on said return as "pensions and annuities, rents and royalties, partnerships, estates or trusts, etc.". The record does not contain a breakdown of income items comprising said reported amount.

2. On March 1, 1976 petitioner filed a claim for refund of personal income tax whereon she claimed a refund of \$240.30 based on an alleged overstatement of income in the amount of \$1,601.96.

3. On December 15, 1976 the Audit Division issued a notice to petitioner wherein it advised her that her claim was disallowed in full on the basis that "Partnership income received by the Leslie DeGrove Potter Trust was distributed to you. It was correctly reported on your 1973 personal tax return since the distribution by the trust was in that year. It was not taxable on the trust return." Subsequently, a formal Notice of Disallowance of petitioner's claim was issued to her on May 23, 1977.

4. Petitioner was the sole beneficiary of the Leslie DeGrove Potter Trust (the Trust). She contended that on her 1973 return she reported income of \$1,601.96 which represented a 1972 distribution from Kirlin, Campbell & Keating, a law partnership of which her deceased husband, Leslie DeGrove Potter, was a member. She argued that said income was nontaxable on her 1973 return since it was a 1972 distribution. She further claimed said income was nontaxable on the basis that it represented a duplication of income since said amount was actually distributed to the trust and she reported it a second time as a distribution from the trust, which reported on a fiscal year ended October 31, 1973.

5. The 1972 calendar year New York State Partnership Return of Kirlin, Campbell & Keating shows a distribution to the "Estate of L. de Grove Potter, c/o Mrs. Josephine Potter" in the amount of \$3,203.92. Said amount is twice as great as the amount petitioner claimed the distribution to be.

CONCLUSIONS OF LAW

A. That no duplication of income was reported by petitioner on her 1973 personal income tax return. The \$1,601.96 allegedly reported by petitioner as

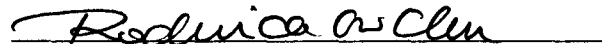
a distribution from the partnership, plus the \$1,601.96 allegedly reported as a distribution from the trust totals \$3,203.92, the actual distribution by the partnership.

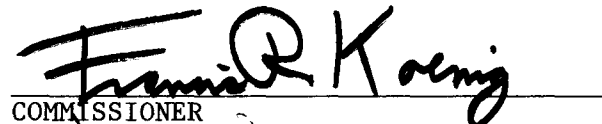
B. That the petition of Josephine D. Potter is denied and the formal Notice of Disallowance of petitioner's claim for refund dated May 23, 1977 is hereby sustained.

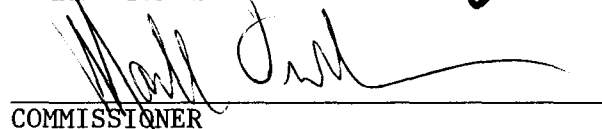
DATED: Albany, New York

APR 15 1983

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER