

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
Ann Semlich	:	
for Redetermination of a Deficiency or a Revision	:	AFFIDAVIT OF MAILING
of a Determination or a Refund of Personal Income	:	
Tax under Article 22 of the Tax Law for the Years	:	
1975 - 1977.	:	

State of New York  
County of Albany

Connie Hagelund, being duly sworn, deposes and says that she is an employee of the State Tax Commission, over 18 years of age, and that on the 10th day of November, 1983, she served the within notice of Decision by certified mail upon Ann Semlich, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Ann Semlich  
11619 Hortense St.  
N. Hollywood, CA 91602

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  
10th day of November, 1983.

Maucha L. Sennelle

Connie Hagelund

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Ann Semlich :  
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 :  
1975 - 1977. :  
\_\_\_\_\_

State of New York  
County of Albany

Connie Hagelund, being duly sworn, deposes and says that she is an employee of the State Tax Commission, over 18 years of age, and that on the 10th day of November, 1983, she served the within notice of Decision by certified mail upon Julius E. Rhodes the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Julius E. Rhodes  
235 West End Ave.  
New York, NY 10023

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  
10th day of November, 1983.

Maucha L. Linnelle

Connie E. Hagelund

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

November 10, 1983

Ann Semlich  
11619 Hortense St.  
N. Hollywood, CA 91602

Dear Ms. Semlich:

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 Law 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  
Building #9 State Campus  
Albany, New York 12227  
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Julius E. Rhodes  
235 West End Ave.  
New York, NY 10023  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
ANN SEMLICH	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Years 1975 through 1977.	:	

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Petitioner, Ann Semlich, 11619 Hortense Street, North Hollywood, California 91602, 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 1975 through 1977 (File No. 27152).

A formal hearing was held before Arthur Bray, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on March 17, 1982 at 2:45 P.M., with all briefs to be submitted by July 7, 1982. Petitioner appeared by Julius E. Rhodes, C.P.A. The Audit Division appeared by Paul B. Coburn, Esq., (Samuel Freund, Esq., of counsel).

#### ISSUES

I. Whether petitioner is entitled to an itemized deduction on her New York State Income Tax Resident Return for a charitable contribution made while she was a resident of California.

II. Whether petitioner was required to accrue on her final 1975 resident return the remaining capital gains arising from the installment sale of real property located within New York.

III. Whether the Audit Division should have taken into account the estate tax paid on the value of the right to receive installment payments in determining petitioner's asserted New York income tax liability.

IV. Whether petitioner is entitled to an itemized deduction on her Nonresident Income Tax Return arising from the income tax reported and paid to New York on the New York State Income Tax Fiduciary Returns of her husband's estate.

FINDINGS OF FACT

1. Petitioner, Ann Semlich, on behalf of herself and her deceased husband, filed a part-year joint New York State Income Tax Resident Return for the year 1975. The return indicated that petitioner's husband, Charles Semlich, died on February 4, 1975 and that petitioner changed her residence from New York to California on March 1, 1975. On this return, petitioner reported a gain of \$14,519.94 derived from an installment sale of real property on January 15, 1975. This property was located at 342 East 19th Street, New York, New York. The gain reported represented fifty percent of the cash received in the year of the sale multiplied by her husband's gross profit percentage. Petitioner also reported the interest income arising from the installment sale. On the Schedule for Change of Resident Status, which was attached to the return, petitioner reported a charitable contribution of \$6,133.00 as an itemized deduction from income earned during her resident period.

2. Petitioner filed a New York State Income Tax Nonresident Return for the years 1976 and 1977. On each return petitioner reported the interest income and amortization of gain arising from the installment sale which took place on January 15, 1975.

3. On March 8, 1979, the Audit Division issued a Notice of Deficiency asserting a deficiency of personal income tax for the years 1975, 1976 and 1977 in the amount of \$9,211.37 plus interest of \$2,228.66 for a total amount due of \$11,440.03. The Statement of Audit Changes, which was issued on December 1,

1978, stated, in pertinent part, that section 654(c)(1) of the Tax Law provided that a taxpayer who changed his status from a resident to a nonresident was required to accrue items of gain, loss, or deduction on the taxpayer's final return for the period prior to the change of residence. The Statement also provided that since petitioner failed to submit all of the information requested in prior letters, the balance of the gain on the installment sale would be accrued on petitioner's final resident return for 1975. Since the Audit Division accrued the entire gain on the installment sale on petitioner's final resident return for 1975, the gains from the installment sale and New York's corresponding capital gains modification were omitted in recomputing petitioner's New York income for the years 1976 and 1977. The Statement of Audit Changes also stated that the New York capital gain modification was adjusted based on the accrual of the installment sale on petitioner's resident return for 1975.

The Statement further noted that interest income received by a nonresident from the installment sale of New York rental property is subject to New York personal income tax. Since the interest income reported on petitioner's 1975 Federal income tax return was larger than that reported on petitioner's Schedule for Change of Resident Status, the interest income reported on petitioner's New York returns was increased.

The Statement of Audit Changes also provided that the total income which should have been reported as the Federal amount on the nonresident returns for 1976 and 1977 should be total Federal income with the appropriate modifications as if petitioner were a resident of New York for the entire year. Therefore, the Audit Division added the New York capital gain modification to Federal adjusted gross income to determine the Federal amount of income for New York State purposes for the year 1976. For the year 1977, the Audit Division added

the capital gain modification to and subtracted petitioner's New York State and local income tax refund from petitioner's Federal adjusted gross income to determine the Federal amount of income for New York State income tax purposes for the year 1977. The Statement then proceeded to state that the Audit Division redetermined the portion of petitioner's itemized deductions and exemptions allowable on her nonresident returns for 1975, 1976 and 1977 based upon adjusted New York income and modified Federal income.

Lastly, to the extent relevant herein, the Statement of Audit Changes stated that on the basis of information submitted by petitioner that the charitable contributions in the amount of \$6,133.00 were made after petitioner became a nonresident and therefore, this amount could not be included as an itemized deduction on petitioner's resident return for 1975. However, the Audit Division allowed this amount as an itemized deduction in computing taxable income on petitioner's nonresident return.

4. On or about May 8, 1975, petitioner's son, Charles Semlich, on petitioner's behalf, gave the Church of Scientology \$5,000.00 by his check made payable to said church. Petitioner had provided the funds used to draw this check on May 5, 1975. On or about June 30, 1975, petitioner gave the Church of Scientology \$1,133.32 by her own check made payable to the Church.

5. On August 19, 1976, the Internal Revenue Service announced that it had retroactively rescinded its suspension of the deductibility of contributions to the Church of Scientology.

6. Charles Semlich's will was probated in Surrogate's Court, New York County. Upon the closing of the Estate, the title to the note and underlying mortgage arising from the installment sale were assigned to petitioner. The Estate of Charles Semlich was not closed until at least September 11, 1975.

7. Petitioner's accountant filed two New York State Income Tax Fiduciary Returns on behalf of the Estate of Charles Semlich. One return was for the period February 4, 1975 to June 30, 1975 and the second return was for the period July 1, 1975 to June 30, 1976. On the fiduciary return for the period February 4, 1975 to June 30, 1975, the accountant reported the amortization of the gain which represented fifty percent of the cash received each year and what purported to be the interest income arising from the installment sale. On the return for the period ending June 30, 1976, he reported only interest income. The New York State and City fiduciary returns filed for the short period in 1975 showed state and city taxes due in the respective amounts of \$67.23 and \$24.32. The New York State fiduciary returns filed for the period ending June 30, 1976, showed no tax due.

8. Petitioner stated in her petition and the tax returns establish that the following amounts were reported for amortization of mortgage payments received and for interest income derived therefrom as follows:

<u>Year</u>	<u>Amortization</u>	<u>Interest on Mortgage</u>
1975	\$30,893.48	\$ 3,356.50
1976	1,897.43	6,602.53
1977	2,054.92	6,445.01

Petitioner also argued in her petition that no consideration was given for New York State and City fiduciary taxes paid, nor for estate taxes attributable to a mortgage receivable on which \$2,091.55 was paid.

#### CONCLUSIONS OF LAW

A. That section 654(a) of the Tax Law provides, in part, that:

"If an individual changes his status during his taxable year from resident to nonresident, or from nonresident to resident, he shall file one return as a resident for the portion of the year during which he is a resident, and one return as a nonresident for the portion of the year during

which he is a nonresident, subject to such exceptions as the tax commission may prescribe by regulation."

B. That Tax Law section 654(b) provides, in part:

"The New York taxable income ... for the portion of the year during which he is a resident shall be determined ... as if his taxable year for federal income tax purposes were limited to the period of his resident status. The New York taxable income ... for the remaining portion of his taxable year during which he is a nonresident shall be determined ... as if his taxable year for federal income tax purposes were limited to the period of his nonresident status."

C. That since the charitable contributions were made after petitioner had become a resident of California, the Audit Division properly allocated petitioner's charitable contribution to petitioner's nonresident period (Tax Law §654(b)).

D. That Tax Law section 654(c)(1) provides:

"If an individual changes his status from resident to nonresident, he shall, regardless of his method of accounting, accrue for the portion of the taxable year prior to such change of status any items of income, gain, loss or deduction accruing prior to the change of status, if not otherwise properly includible (whether or not because of an election to report on an installment basis) or allowable for New York income tax purposes for such portion of the taxable year or for a prior taxable year. The amounts of such accrued items shall be determined with the applicable modifications described in sections six hundred twelve and six hundred fifteen as if such accrued items were includible or allowable for federal income tax purposes."

E. That at the time petitioner changed her status from resident to non-resident, the interest income from the mortgage and the gain derived from the sale of real property in New York were items of income of the estate of petitioner's deceased husband (I.R.C. §641) and not petitioner's items of income (I.R.C. §662). Accordingly, petitioner was not required to accrue the entire gain from the sale of real property in New York or the interest income

from the mortgage on her final New York resident income tax return (Tax Law §654(c)(1)).

F. That section 632(b)(2) of the Tax Law provides that:

"Income from intangible personal property, including annuities, dividends, interest, and gains from the disposition of intangible personal property, shall constitute income derived from New York sources only to the extent that such income is from property employed in a business, trade, profession, or occupation carried on in this state."

G. That the interest income received as a nonresident on the mortgage arising from the sale of real property was not income "...from property employed in a business, trade, profession, or occupation carried on in this state." (Tax Law §632(b)(2)). Accordingly, this interest income is not subject to New York State personal income tax (Matter of Epstein v. State Tax Commission, 89 A.D.2d 256).

H. That, in general, petitioner's New York taxable income during her nonresident periods is her New York adjusted gross income less her New York deduction and New York personal exemptions (Tax Law §631). Petitioner's New York adjusted gross income should include only the portion of the capital gain plus the capital gain modification attributable to the installment sale.

I. That petitioner is entitled to a deduction based upon the Federal estate tax paid by the Estate of Charles Semlich arising from the income derived from the installment sale (I.R.C. §691(c)).

J. That there is no provision in the New York Tax Law which provides for a credit or deduction from New York personal income tax arising from the New York estate taxes paid.

K. That the petition of Ann Semlich is granted to the extent of Conclusions of Law "E", "G" and "I". The Audit Division is directed to modify the Notice

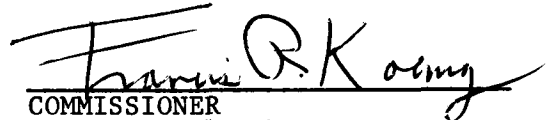
of Deficiency and that, except as so granted, the petition of Ann Semlich is in all other respects denied.

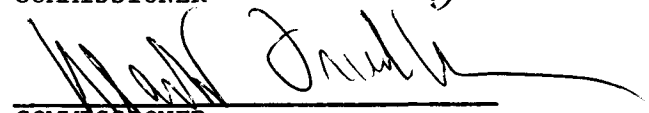
DATED: Albany, New York

STATE TAX COMMISSION

NOV 10 1983

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER

CLAIM CHECK  
NO.

495481

W YORK

mission

BUREAU

APUS

12227

DATE SALES

11/12

1ST NOTICE

11-18

2ND NOTICE

11-25

RETURN

Detached from  
PS Form 3848-A  
Oct. 1980

CLAIM CHECK

**ERTIFIED**

170 315 124

**MAIL**

NOTED  
Julius E. Rhodes  
235 West End Ave.  
New York, NY 10023



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

November 10, 1983

Ann Semlich  
11619 Hortense St.  
N. Hollywood, CA 91602

Dear Ms. Semlich:

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 Law 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  
Building #9 State Campus  
Albany, New York 12227  
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Julius E. Rhodes  
235 West End Ave.  
New York, NY 10023  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
ANN SEMLICH : DECISION  
for Redetermination of a Deficiency or for :  
Refund of Personal Income Tax under Article 22 :  
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ISSUES

I. Whether petitioner is entitled to an itemized deduction on her New York State Income Tax Resident Return for a charitable contribution made while she was a resident of California.

II. Whether petitioner was required to accrue on her final 1975 resident return the remaining capital gains arising from the installment sale of real property located within New York.

III. Whether the Audit Division should have taken into account the estate tax paid on the value of the right to receive installment payments in determining petitioner's asserted New York income tax liability.

IV. Whether petitioner is entitled to an itemized deduction on her Nonresident Income Tax Return arising from the income tax reported and paid to New York on the New York State Income Tax Fiduciary Returns of her husband's estate.

FINDINGS OF FACT

1. Petitioner, Ann Semlich, on behalf of herself and her deceased husband, filed a part-year joint New York State Income Tax Resident Return for the year 1975. The return indicated that petitioner's husband, Charles Semlich, died on February 4, 1975 and that petitioner changed her residence from New York to California on March 1, 1975. On this return, petitioner reported a gain of \$14,519.94 derived from an installment sale of real property on January 15, 1975. This property was located at 342 East 19th Street, New York, New York. The gain reported represented fifty percent of the cash received in the year of the sale multiplied by her husband's gross profit percentage. Petitioner also reported the interest income arising from the installment sale. On the Schedule for Change of Resident Status, which was attached to the return, petitioner reported a charitable contribution of \$6,133.00 as an itemized deduction from income earned during her resident period.

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The Statement further noted that interest income received by a nonresident from the installment sale of New York rental property is subject to New York personal income tax. Since the interest income reported on petitioner's 1975 Federal income tax return was larger than that reported on petitioner's Schedule for Change of Resident Status, the interest income reported on petitioner's New York returns was increased.

The Statement of Audit Changes also provided that the total income which should have been reported as the Federal amount on the nonresident returns for 1976 and 1977 should be total Federal income with the appropriate modifications as if petitioner were a resident of New York for the entire year. Therefore, the Audit Division added the New York capital gain modification to Federal adjusted gross income to determine the Federal amount of income for New York State purposes for the year 1976. For the year 1977, the Audit Division added

the capital gain modification to and subtracted petitioner's New York State and local income tax refund from petitioner's Federal adjusted gross income to determine the Federal amount of income for New York State income tax purposes for the year 1977. The Statement then proceeded to state that the Audit Division redetermined the portion of petitioner's itemized deductions and exemptions allowable on her nonresident returns for 1975, 1976 and 1977 based upon adjusted New York income and modified Federal income.

Lastly, to the extent relevant herein, the Statement of Audit Changes stated that on the basis of information submitted by petitioner that the charitable contributions in the amount of \$6,133.00 were made after petitioner became a nonresident and therefore, this amount could not be included as an itemized deduction on petitioner's resident return for 1975. However, the Audit Division allowed this amount as an itemized deduction in computing taxable income on petitioner's nonresident return.

4. On or about May 8, 1975, petitioner's son, Charles Semlich, on petitioner's behalf, gave the Church of Scientology \$5,000.00 by his check made payable to said church. Petitioner had provided the funds used to draw this check on May 5, 1975. On or about June 30, 1975, petitioner gave the Church of Scientology \$1,133.32 by her own check made payable to the Church.

5. On August 19, 1976, the Internal Revenue Service announced that it had retroactively rescinded its suspension of the deductibility of contributions to the Church of Scientology.

6. Charles Semlich's will was probated in Surrogate's Court, New York County. Upon the closing of the Estate, the title to the note and underlying mortgage arising from the installment sale were assigned to petitioner. The Estate of Charles Semlich was not closed until at least September 11, 1975.

7. Petitioner's accountant filed two New York State Income Tax Fiduciary Returns on behalf of the Estate of Charles Semlich. One return was for the period February 4, 1975 to June 30, 1975 and the second return was for the period July 1, 1975 to June 30, 1976. On the fiduciary return for the period February 4, 1975 to June 30, 1975, the accountant reported the amortization of the gain which represented fifty percent of the cash received each year and what purported to be the interest income arising from the installment sale. On the return for the period ending June 30, 1976, he reported only interest income. The New York State and City fiduciary returns filed for the short period in 1975 showed state and city taxes due in the respective amounts of \$67.23 and \$24.32. The New York State fiduciary returns filed for the period ending June 30, 1976, showed no tax due.

8. Petitioner stated in her petition and the tax returns establish that the following amounts were reported for amortization of mortgage payments received and for interest income derived therefrom as follows:

<u>Year</u>	<u>Amortization</u>	<u>Interest on Mortgage</u>
1975	\$30,893.48	\$ 3,356.50
1976	1,897.43	6,602.53
1977	2,054.92	6,445.01

Petitioner also argued in her petition that no consideration was given for New York State and City fiduciary taxes paid, nor for estate taxes attributable to a mortgage receivable on which \$2,091.55 was paid.

#### CONCLUSIONS OF LAW

A. That section 654(a) of the Tax Law provides, in part, that:

"If an individual changes his status during his taxable year from resident to nonresident, or from nonresident to resident, he shall file one return as a resident for the portion of the year during which he is a resident, and one return as a nonresident for the portion of the year during

which he is a nonresident, subject to such exceptions as the tax commission may prescribe by regulation."

B. That Tax Law section 654(b) provides, in part:

"The New York taxable income ... for the portion of the year during which he is a resident shall be determined ... as if his taxable year for federal income tax purposes were limited to the period of his resident status. The New York taxable income ... for the remaining portion of his taxable year during which he is a nonresident shall be determined ... as if his taxable year for federal income tax purposes were limited to the period of his nonresident status."

C. That since the charitable contributions were made after petitioner had become a resident of California, the Audit Division properly allocated petitioner's charitable contribution to petitioner's nonresident period (Tax Law §654(b)).

D. That Tax Law section 654(c)(1) provides:

"If an individual changes his status from resident to nonresident, he shall, regardless of his method of accounting, accrue for the portion of the taxable year prior to such change of status any items of income, gain, loss or deduction accruing prior to the change of status, if not otherwise properly includible (whether or not because of an election to report on an installment basis) or allowable for New York income tax purposes for such portion of the taxable year or for a prior taxable year. The amounts of such accrued items shall be determined with the applicable modifications described in sections six hundred twelve and six hundred fifteen as if such accrued items were includible or allowable for federal income tax purposes."

E. That at the time petitioner changed her status from resident to non-resident, the interest income from the mortgage and the gain derived from the sale of real property in New York were items of income of the estate of petitioner's deceased husband (I.R.C. §641) and not petitioner's items of income (I.R.C. §662). Accordingly, petitioner was not required to accrue the entire gain from the sale of real property in New York or the interest income

from the mortgage on her final New York resident income tax return (Tax Law §654(c)(1)).

F. That section 632(b)(2) of the Tax Law provides that:

"Income from intangible personal property, including annuities, dividends, interest, and gains from the disposition of intangible personal property, shall constitute income derived from New York sources only to the extent that such income is from property employed in a business, trade, profession, or occupation carried on in this state."

G. That the interest income received as a nonresident on the mortgage arising from the sale of real property was not income "...from property employed in a business, trade, profession, or occupation carried on in this state." (Tax Law §632(b)(2)). Accordingly, this interest income is not subject to New York State personal income tax (Matter of Epstein v. State Tax Commission, 89 A.D.2d 256).

H. That, in general, petitioner's New York taxable income during her nonresident periods is her New York adjusted gross income less her New York deduction and New York personal exemptions (Tax Law §631). Petitioner's New York adjusted gross income should include only the portion of the capital gain plus the capital gain modification attributable to the installment sale.

I. That petitioner is entitled to a deduction based upon the Federal estate tax paid by the Estate of Charles Semlich arising from the income derived from the installment sale (I.R.C. §691(c)).

J. That there is no provision in the New York Tax Law which provides for a credit or deduction from New York personal income tax arising from the New York estate taxes paid.

K. That the petition of Ann Semlich is granted to the extent of Conclusions of Law "E", "G" and "I". The Audit Division is directed to modify the Notice

of Deficiency and that, except as so granted, the petition of Ann Semlich is in all other respects denied.

DATED: Albany, New York

STATE TAX COMMISSION

NOV 10 1983

*Richard W. Allen*  
PRESIDENT

*Francis R. Koenig*  
COMMISSIONER

*Mark J. Smith*  
COMMISSIONER