

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
W. Mason Smith	:	
and Jane P. Smith	:	AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or Revision	:	
of a Determination or Refund of Personal Income	:	
Tax under Article 22 of the Tax Law for the Year	:	
1974.	:	

State of New York }

ss.:

County of Albany }

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 1st day of June, 1984, he served the within notice of Decision by certified mail upon W. Mason Smith and Jane P. Smith, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

W. Mason Smith  
and Jane P. Smith  
c/o Barret, Smith, Schapiro, Simon & Armstrong  
26 Broadway  
New York, NY 10004

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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  
1st day of June, 1984.



  
Authorized to administer oaths  
pursuant to Tax Law section 174



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

June 1, 1984

W. Mason Smith  
and Jane P. Smith  
c/o Barret, Smith, Schapiro, Simon & Armstrong  
26 Broadway  
New York, NY 10004

Dear Mr. & Mrs. Smith:

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, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only 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  
Donald Schapiro  
Barrett, Smith, Schapiro, Simon & Armstrong  
26 Broadway  
New York, NY 10004  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
	:	
W. MASON SMITH AND JANE P. SMITH	:	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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Petitioners, W. Mason Smith and Jane P. Smith, c/o Barrett, Smith, Schapiro, Simon & Armstrong, 26 Broadway, New York, New York 10004, 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. 31762).

A formal hearing was held before Daniel J. Ranalli, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on September 15, 1983 at 1:30 P.M., with all briefs to be submitted by December 21, 1983. Petitioners appeared by Barrett, Smith, Schapiro, Simon & Armstrong (Donald Schapiro, Esq., of counsel). The Audit Division appeared by John P. Dugan, Esq. (Kevin Cahill, Esq., of counsel).

ISSUE

Whether petitioner Jane P. Smith, as a resident beneficiary of a trust created under the will of a domiciliary of Massachusetts, is entitled to a credit for income taxes paid by the trustee on income accumulated by the trust.

FINDINGS OF FACT

1. For tax year 1974, petitioners, W. Mason Smith and Jane P. Smith, filed separate returns on a New York State combined income tax return for residents. On April 13, 1979, as the result of a field audit, the Audit Division issued a Notice of Deficiency against petitioners in the amount of

\$41,047.00, plus interest of \$13,936.68, for a total due of \$54,983.68 for the year 1974.

2. On December 15, 1977, petitioners executed a consent fixing the period of limitation for the taxable year ended December 31, 1974 at April 15, 1979.

3. In 1974, petitioner Jane P. Smith received an accumulation distribution from a trust under the will of Lewis T. Prouty, who died a domiciliary of Massachusetts. The income of this trust was accumulated over a period of years and income taxes were paid to Massachusetts on such income on an annual basis. On the death of the income beneficiary and the termination of the trust, the accumulated income was distributed to Mrs. Smith and reported on her 1974 Federal income tax return. Mrs. Smith did not include the accumulation distribution on her New York return.

4. On audit, the auditor added \$273,646.00 to the New York taxable income of Mrs. Smith for 1974 by reason of the accumulation distribution. The auditor included in the aforesaid amount \$24,902.00 in Massachusetts income tax which had been paid by the Prouty trust and deducted by the trust in computing its federal taxable income.

5. Both the Audit Division and petitioners agree that state income taxes paid by a fiduciary of a nonresident trust and deducted from gross income to arrive at federal taxable income should be included in the state taxable income of a resident beneficiary receiving an accumulation distribution. Petitioners, however, maintain that Jane P. Smith, not the trust fiduciary, bore the economic burden of the Massachusetts tax and that she is entitled to a credit for income tax imposed by another state under section 620(a) of the Tax Law. The Audit Division argues, on the other hand, that the Massachusetts fiduciary income taxes were imposed upon the trust not upon petitioner Jane P. Smith personally

and she is, therefore, not allowed a credit for such taxes on her personal income tax return. Alternatively, the Audit Division argues that, even if petitioners had been taxed personally by Massachusetts, they would not be entitled to a credit in this instance because the income was derived from intangible property and the resident credit on such income is expressly disallowed by 20 NYCRR 121.3(d).

#### CONCLUSIONS OF LAW

A. That section 620(a) of the Tax Law provides that a credit is allowed to residents for income taxes paid to other states or their political subdivisions or to the District of Columbia on income which is also subject to New York tax under Article 22 of the Tax Law.

B. That although a trust is essentially a conduit for the transmission of income to the beneficiaries (4 Rabkin & Johnson, Federal Income, Gift and Estate Taxation, §54.01), trusts are treated as separate and independent taxable entities which are required to file returns and pay tax on income not considered distributed to beneficiaries (6 Mertens, Law of Federal Income Taxation, §36.01). The tax imposed by Massachusetts on the Prouty trust was taxable to the trust and payable by the fiduciary; it was not taxable to petitioner Jane P. Smith (see Matter of Graham, State Tax Commission, April 25, 1980). Since petitioners paid no income taxes to Massachusetts, no credit is allowable under section 620(a) of the Tax Law. Section 621(a) of the Tax Law provides for a credit for a resident beneficiary receiving an accumulation distribution in an amount based upon the New York income tax paid by the trust in preceding taxable years on trust income currently included in the beneficiary's New York income due to an accumulation distribution; however, in the instant


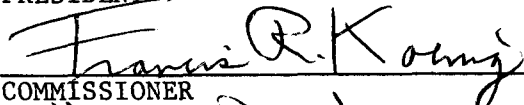
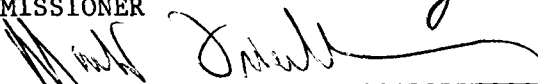
case there was no showing that the Prouty trust had any New York source income or had paid New York income tax.

C. That the petition of W. Mason Smith and Jane P. Smith is denied and the Notice of Deficiency issued April 13, 1979 is sustained.

DATED: Albany, New York

STATE TAX COMMISSION

JUN 01 1984

  
PRESIDENT  
  
COMMISSIONER  
  
COMMISSIONER