

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
Estate of Clarence Z. Spriggs	:	
James O. Spriggs, Executor	:	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	:	
1977.	:	

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 18th day of January, 1984, he served the within notice of Decision by certified mail upon Estate of Clarence Z. Spriggs, James O. Spriggs, Executor, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Estate of Clarence Z. Spriggs
James O. Spriggs, Executor
9903 Thornwood Rd.
Kensington, MD 20795

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
18th day of January, 1984.





Authorized to administer oaths

pursuant to Tax Law section 174

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

January 18, 1984

Estate of Clarence Z. Spriggs
James O. Spriggs, Executor
9903 Thornwood Rd.
Kensington, MD 20795

Dear Mr. Spriggs:

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: Taxing Bureau's Representative

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
THE ESTATE OF CLARENCE Z. SPRIGGS	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1977.	:	

Petitioner, The Estate of Clarence Z. Spriggs, c/o James O. Spriggs, Executor, 9903 Thornwood Road, Kensington, Maryland, 20795, 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 1977 (File No. 34678).

A formal hearing was scheduled to be held before Dennis M. Galliher, Hearing Officer, at the offices of the State Tax Commission, Building 9, State Office Campus, Albany, New York, on May 9, 1983 at 1:15 P.M. Prior to the commencement of proceedings on the record, representatives for the parties agreed that the matter should be submitted for decision by the State Tax Commission based on the documents contained in the file, without need for oral argument or the submission of briefs. Accordingly, after due consideration of the entire file, the Commission renders the following decision.

ISSUES

I. Whether a condemnation award received by petitioner, based upon the prior appropriation of a parcel of land owned by petitioner's decedent, constituted income in respect of a decedent pursuant to section 691 of the Internal Revenue Code.

II. If so, whether petitioner has substantiated and is entitled to certain deductions for expenses associated with pursuing and obtaining such award.

FINDINGS OF FACT

1. On May 10, 1978, the Audit Division received a New York State Income Tax Fiduciary Return (Form IT-205) for the year 1977 filed on behalf of petitioner, The Estate of Clarence Z. Spriggs. This return reflected interest income of \$11,574.03, a deduction of \$10,843.72 for distributions to beneficiaries and an exemption of \$600.00, thus leaving a taxable income of \$130.31 and a tax due, which was remitted, of \$2.60.

2. On September 11, 1980, the Audit Division issued to petitioner a Statement of Audit Changes containing calculations indicating additional (fiduciary) income tax and minimum income tax due for 1977 in the aggregate amount (after allowance for the \$2.60 previously paid) of \$6,747.62, plus interest. Included in explanation of the additional tax reflected on this statement was the following:

"[t]his Statement of Audit Changes is based on the information on hand concerning the payment received for the involuntary conversion of property located in New York State. The payment is subject to Long Term Capital Gain treatment. Interest received is treated as ordinary income. Our information shows the total award was \$74,925.18, including \$14,925.18 interest.

The portion of Long Term Capital Gains not subject to New York Personal Income Tax is an Item of Preference and subject to New York Minimum Income Tax...".

3. The aforementioned Statement of Audit Changes was subsequently recalculated by the Audit Division based upon the allowance of a deduction for attorney's fees in the amount of \$9,600.00, and was reissued to petitioner on February 4, 1981, reflecting a reduction of the tax asserted as due from \$6,747.62 to \$5,705.06. The Audit Division again asserted its position that the sum at issue stemmed from an award by the Court of Claims, together with

interest thereon, which constituted income in respect of a decedent subject to tax in the year of receipt.

4. On April 1, 1981, the Audit Division issued a Notice of Deficiency to petitioner asserting additional tax due for the year 1977 in the amount of \$5,705.06, plus interest.

5. Petitioner is The Estate of Clarence Z. Spriggs, represented in this matter by James O. Spriggs who was appointed sole executor on April 20, 1971.

6. Clarence Z. Spriggs, a resident of Onondaga County, New York, died on October 26, 1970. Prior thereto, on November 12, 1969, the Highway Department of the State of New York had appropriated approximately five and one-half acres of real property located in Onondaga County and owned by Mr. Spriggs. This parcel was the remaining portion of a tract of land, known as the Westover Tract, which had been conveyed to Mr. Spriggs on June 17, 1926. Mr. Spriggs had subdivided and sold all of the Westover Tract sometime after he acquired it, except for the noted five and one-half acres which he had retained for business and investment purposes.¹

7. Upon its appropriation of the five and one-half acre parcel (hereinafter "the land"), the Highway Department awarded Mr. Spriggs \$12,000.00, of which \$9,000.00 was paid to Mr. Spriggs on April 10, 1970. Sometime thereafter, but prior to the October 26, 1970 date of Mr. Spriggs death, Mr. Spriggs retained a law firm (Alderman, Alderman, Samuels and Schepp, Esqs.) to prosecute a claim against the State of New York upon the basis that the amount awarded for the land was not consistent with the value of the land as determined by an appraisal

¹ Neither the price paid (if any) by Mr. Spriggs when he originally acquired the Westover Tract, nor the consideration received for the lots sold out of it were specified. The executor claims to have no knowledge of these amounts nor any means of determining them.

performed for Mr. Spriggs. The attorney's fee was to be twenty percent of any judgement in excess of the original \$12,000.00 award, plus costs and disbursements.

8. The above claim against the State of New York, initiated by Mr. Spriggs prior to his death, was continued thereafter by petitioner (through the named attorneys) in the form of a proceeding in the Court of Claims to recover the \$95,000.00 alleged fair market value of the property.

9. On December 15, 1975, the Court of Claims ruled that title to the land passed to the State on the November 12, 1969 date of the appropriation. The judgement further provided, in relevent part, as follows:

"... the Court concludes, finds and fixes the unit value of the subject property at the time of the appropriation at \$11,000.00 per acre, for a total of \$60,137.00, rounded to \$60,000.00

3. The Court awards the Claimant the sum of \$60,000.00 as and for all damages, together with interest from November 12, 1969 to May 12, 1970 and from October 26, 1971 to the date of entry of Judgement herein."

The Appellate Division affirmed the Court of Claims decision in full on January 13, 1977, and the case was not appealed by New York State.

10. Pursuant to the foregoing judgement, the Department of Audit and Control, on March 25, 1977, issued a check to petitioner in the amount of \$64,925.18, together with an explanation of the computation of this amount which provided as follows:

Principal Amount of Award	\$60,000.00
Less: Principal Amount of Prior Payments	-10,000.00*
Principal Balance of Award	\$50,000.00
Interest on Principal Balance of Award	14,141.66
Balance of Judgement	\$64,141.66
Post-Judgement Interest	534.51
Total Balance Payment	\$64,676.17
Costs and Interest Brought Forward	249.01**
Total Amount of Check	\$64,925.18

* The \$10,000.00 principal amount of prior payments was somewhat unclear, inasmuch as only \$9,000.00 had been

previously paid to petitioner (on April 10, 1970). The remaining \$1,000.00 payment appears to have been made subsequent to payment of the court's December 15, 1975 judgment (see Finding of Fact "11" infra). No clear explanation or reason for this manner of payment was provided.

** Of the "Costs and Interest Brought Forward", \$247.32 were costs and \$1.69 was interest.

11. On or about April 15, 1977, the remaining \$1,000.00 of the award (the remaining "prior payment" due) was paid by the State, together with interest in the amount of \$295.54 (neither the interest rate nor the period during which interest accrued were specified).

12. Final Federal and New York State personal income tax returns for 1970, covering the period from January 1, 1970 to October 26, 1970, the date of Mr. Sprigg's death, were filed on behalf of Mr. Spriggs on April 10, 1971, utilizing the calendar year, cash method of accounting. The \$9,000.00 payment received by Mr. Spriggs on April 10, 1970 was not included in these returns. However, amended Federal and New York State personal income tax returns for 1970 were filed on August 7, 1971 for the purpose of paying tax due on the capital gain of \$9,000.00 (the April 10, 1970 payment).

13. Federal and New York State estate tax returns were filed in or about December, 1971, listing the land in question as being worth \$86,000.00 (\$95,000.00 appraised value less the \$9,000.00 paid).

14. The Audit Division's February 4, 1981 recomputation allowed a deduction for attorney's fees of \$9,600.00 paid in pursuing the above action in the courts. However, no deduction was allowed for appraiser's fees or for the \$9,000.00 payment previously included on the amended 1970 final income tax returns. Petitioner asserts total attorney's fees were \$15,838.14, and thus seeks a deduction for additional attorney's fees paid (\$6,238.14), appraiser's

fees paid (\$3,465.76) and for the \$9,000.00 payment by the State previously included by petitioner in income. Accordingly, the aggregate increased deduction sought in this regard equals \$18,703.90.

15. In support of its claim concerning (additional) attorney's fees and appraiser's fees, petitioner submitted itemized bills specifying the computation of such fees as was requested during a pre-hearing conference, together with copies of cancelled checks evidencing payment.²

16. Petitioner notes that interest in the amount of \$295.54 paid with the State's April 15, 1977 payment of \$1,000.00 (see Finding of Fact "11") was not included on petitioner's 1977 fiduciary income tax returns (see Finding of Fact "1"), and that such amount should have been included therein.

17. Petitioner asserts that the award received did not constitute income in respect of a decedent and that no tax is due on such award. However, petitioner maintains that if such award is determined to be income in respect of a decedant, petitioner should be allowed the deductions specified in Finding of Fact "14", as well as additional deductions as follows:

a) an estate tax deduction of \$1,371.29 attributable to inclusion of the award in the decedant's taxable estate. This deduction was calculated as 28.6 percent of the New York estate tax paid (\$4,793.69), since the \$51,000.00 award equalled 28.6 percent of the New York taxable estate (\$178,283.30) upon which the estate tax was imposed;

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The actual payment to the appraiser exceeded the amount shown on his bill, due to accrued interest on the outstanding amount. It is further noted that costs and interest of \$249.01 were included as part of the attorney's fees paid.

b) a deduction of \$12,691.89 allegedly representing an overpayment of Federal estate tax due to overvaluation of the land on petitioner's Federal estate tax return. A refund claim for this amount was refused as untimely by the Internal Revenue Service ("I.R.S."). Petitioner claims deduction on the basis that such amount is a "bad debt" resulting from its inability to recover the overpayment from the I.R.S.;

c) a deduction for the cost basis of the land. Petitioner could not establish the original cost basis and suggested a basis of \$13,500.00, calculated by discounting at 3½ percent the value of the land as determined by the Court of Claims (\$60,000.00) from the November 12, 1969 appropriation back to the June 17, 1926 date of acquisition by Mr. Spriggs.

CONCLUSIONS OF LAW

A. That the New York taxable income of a resident estate is defined by section 618 of the Tax Law as the estate's Federal taxable income for the taxable year, with certain New York modifications not at issue herein.

B. That section 691 of the Internal Revenue Code sets forth the general rule of inclusion in gross income of items of income in respect of a decedent, as follows:

"(a)(1) The amount of all items of gross income in respect of a decedent which are not properly includible in respect of the taxable period in which falls the date of his death or a prior period...shall be included in the gross income, for the taxable year when received, of:

(A) the estate of the decedent, if the right to receive the amount is acquired by the decedent's estate from the decedent;..."

C. That title to the subject property passed to the State on November 12, 1969, which was prior to Mr. Spriggs' death on October 26, 1970. Furthermore,

the action in the Court of Claims was commenced by Mr. Spriggs prior to his death and was continued thereafter by his estate.

D. That insofar as the decedent's right to compensation for the appropriation of the real estate came into being prior to his death, the award paid to his estate after his death constituted income in respect of a decedent and was taxable as such when received. Matter of Zeamon v. Tully, 91 A.D.2d 67; Matter of Estate of Harry Gaver, Robert Gaver, Executor, State Tax Comm., November 6, 1981.

E. That petitioner is entitled to deduct estate taxes which are attributable to the condemnation award, in accordance with section 691(c)(1) of the Internal Revenue Code, and such other expenses as are permitted by section 691(b) of the Code. In this regard a deduction for estate taxes in the amount of \$1,371.29 is to be allowed and it is further noted that attorney's fees and appraiser's fees were substantiated by petitioner and are deductible. However, no deduction or other adjustment may be allowed for the alleged \$12,691.89 "bad debt" loss due to overpayment of Federal estate taxes, or for a cost or other basis of the subject property.

F. That in recomputing the deficiency, the Audit Division shall include additional interest of \$295.54 (see Finding of Fact "16"), and deduct \$9,000.00 based on the prior payment made and included in Mr. Spriggs' final (1970) income tax return, as well as the other aforementioned allowable deductions.


G. That the petition of the Estate of Clarence Z. Spriggs is granted to the extent indicated in Conclusions of Law "E" and "F"; that the Notice of

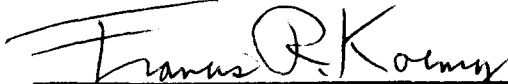
Deficiency issued April 1, 1981 is to be modified accordingly; and that except as so modified, the deficiency is in all other respects sustained.

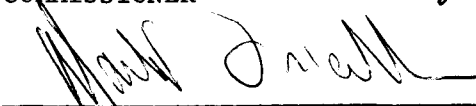
DATED: Albany, New York

STATE TAX COMMISSION

JAN 18 1984


PRESIDENT


COMMISSIONER


COMMISSIONER