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MEMORANDUM

Income Tax Determinations
A-2
Freedman, David A.,
Est. of

TO: Commissioners Murphy and Macduff

FROM: E. H. Best, Counsel

SUBJECT: Formal Hearing - Article 16 Taxes

Estate of David A. Freedman
1954 Assessment B-415465
1955 Assessment B-415466

This formal hearing case under Article 16 of the Tax Law requires a determination as to whether the distribution of income from personal property to beneficiaries by an administrator of an estate is deductible by the estate pursuant to the provisions of Section 365, subdivision 3 of Article 16 of the Tax Law.

The basic facts are not in dispute. The taxpayer, an insurance agent, died intestate on January 16, 1952, a resident of New York State. His estate was not terminated within the usual period following death but was left open to receive the decedent's renewal commissions and thus facilitate the distribution thereof to his widow and three adult children, his only heirs-at-law. The renewal commission income, together with interest and dividend income received by the administratrix, was distributed to the beneficiaries and was deducted on the 1954-1955 returns of income filed for the estate.

The amounts of such distributions due specific beneficiaries were not always made each time in equal amounts to all beneficiaries but the distributions were made on the basis of the current respective financial needs and tax status of each beneficiary. During 1954, the beneficiaries also received distributions of capital gains which are not here at issue, having been properly reported and taxed to the estate under our law. During 1954 and 1955, no distribution of corpus was made to any beneficiary. The record shows that none of the distributions to beneficiaries was approved prior or subsequent thereto by the Surrogate, as there was no conflict between the beneficiaries.

Section 365, subdivision 3 of Article 16 provides that: "in determining the net income of the estate of any deceased person during the period of administration or settlement there may be deducted the amount of any income properly paid or credited to any legatee, heir or other beneficiary."

The question thus arises as to whether these distributions of monies received as insurance renewal commissions, interest income and dividend income by the estate represented income

taxable to the estate, or whether such amounts represented current income properly paid or credited to the beneficiaries and as such deductible by the estate and taxable to the beneficiaries as the representative contended at the hearing.

In a ruling of the Commission on February 3, 1922 it was held that although income from real property is income to the legatee and not income to the executor or the administrator, income from personal property not specifically bequeathed under the terms of the will is income to the executor, administrator or personal representative of the deceased. Subsequently, by virtue of the 1929 revision of the Decedent Estate Law, the distinction between heirs and next of kin was abolished. Furthermore, section 17(b) of the Personal Property Law was amended in 1931 by adding the following provision:

"Unless otherwise expressly provided by the will of a person dying after this act takes effect, all income from real and personal property earned during the period administration * * * and not payable to others or otherwise disposed of by the will shall be disposed of pro rata as income among the * * * persons entitled to such residuary estate."
(Emphasis supplied)

The 1922 ruling was amended on April 24, 1931 to give effect to the amendment of the Personal Property Law by providing that income from real and personal property earned during the period of administration and not payable to others by express provision of the will shall be deducted from the gross income of an estate and is, therefore, not taxable to the estate.

Although the amendment to Section 17(b) of the Personal Property Law did not specifically refer to personal property distributed under intestacy, I am of the opinion that the distribution of property not specifically disposed of should be allowable as a deduction from the gross income of the estate whether or not the property is disposed of by an executor under a will or by an administrator in intestacy. This has been the position of the Federal Government on the basis of long-standing Federal ruling with respect to a similar Federal statute. (1927 General Counsel Memorandum No. 2509; Internal Revenue Cumulative Bulletin VI-2, P. 235). Accordingly, dispositions of income in cases of intestacy falling under the Federal rule are excludible from the gross income of the estate under Article 22 of the Tax Law. Furthermore, it is to be noted that the question herein is unique and that no assessments of a similar kind have been issued.

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I have accordingly prepared a proposed determination canceling the assessment. If you agree, kindly sign the same and return to the Law Bureau for further processing.

/s/

E. H. BEST

Counsel

MS:aw
Enc.

November 22, 1966

STATE OF NEW YORK

STATE TAX COMMISSION

.....
IN THE MATTER OF THE APPLICATIONS OF
RUTH FREEDMAN, AS ADMINISTRATRIX OF
THE ESTATE OF DAVID A. FREEDMAN,
FOR REVISION OR REFUND OF PERSONAL
INCOME TAXES UNDER ARTICLE 16 OF THE
TAX LAW FOR THE YEARS 1934 AND 1935.
.....

Ruth Freedman, as administratrix of the Estate of David A. Freedman, having duly filed Applications for Revision or Refund under Article 16 of the Tax Law for the years 1934 and 1935; a hearing having been held in connection therewith before Laurence S. Gifford, Hearing Officer, of the Department of Taxation and Finance on January 30, 1943, at which hearing Stanley A. Freedman appeared on behalf of the administratrix, and the matter having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That Ruth Freedman, as administratrix of the Estate of David A. Freedman, filed returns of income for each of the calendar years of 1934 and 1935, that the normal income of the estate reported thereon (consisting of interest, dividends and insurance renewal commissions) was reduced by deductions for distributions to beneficiaries totaling \$19,341.34 in 1934 and \$13,000.00 in 1935, that an income tax under Article 16 of the Tax Law was computed and paid by the estate for each of the two years on the balance of such normal income in excess of the said respective distributions and in addition a net capital gain tax under the same tax article was computed and paid by the estate for such two years on the gains realized on sales in such years of certain assets included in the corpus of the estate:

(2) That on audit of such returns the Income Tax Bureau held that the said distributions to beneficiaries did not represent proper deductions against the income of the estate for purposes of

computing the tax liability of the estate under Article 16 of the Tax Law, as the decedent died intestate, that in accordance with such audit the additional taxes here at issue under Article 16 of the Tax Law were assessed against the estate (as set forth in the margin).

(3) That the estate contends that the distributions were currently deductible under Section 365, subdivision 3 of Article 16 of the New York Tax Law whether the decedent died testate or intestate, as the payments represented proper distributions of income to beneficiaries on the basis of a long-standing Federal ruling with respect to a similar Federal statute, (1927 General Counsel Memorandum No. 2569; Internal Revenue Cumulative Bulletin VI-2, P. 235).

(4) That the record shows that David A. Freedman was a resident of New York State when he died intestate on January 16, 1932, that for a number of years prior thereto he was a life insurance agent, that his estate consisted in part of life insurance renewal commissions payable in installments over a number of years following his death, that the beneficiaries of his estate were his widow (Ruth Freedman, the Administratrix) and his three adult children, that the estate was kept open through these years and until 1937 "to provide a medium to collect the commissions conveniently", and then to make distribution thereof to the beneficiaries, that the distributions here in question were made periodically to beneficiaries on the basis of the financial needs and of the "overall tax basis" of the beneficiaries, that it was stated at the hearing that no application for approval of any of these distributions by the estate was ever submitted to or passed upon by the surrogate, since the beneficiaries were all members of one immediate family, the beneficiaries were all of adult age and "there was no conflict".

Upon the foregoing findings and all the facts and evidence presented, the State Tax Commission hereby

DETERMINES:

(A) That the above distributions to beneficiaries are deductible under Section 365, subdivision 3 of Article 16 of the New York Tax Law against the income of the estate for purposes of computing the income tax liability of the estate for the years 1954 and 1955.

(B) That accordingly the assessment (No. S-415403) for the year 1954 in the amount of \$1,347.01 and assessment (No. S-415404) in the amount of \$980.93 for the year 1955 are hereby vacated and set aside.

Dated: Albany, New York this 6th day of December, 1966.

STATE TAX COMMISSION

/s/

JOSEPH H. MURPHY

President

/s/

JAMES R. MACDUFF

Commissioner