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MEMORNADUM

Income Tax Determination
Arcieri, Mary
A-2

TO: State Tax Commission

FROM: Solomon Sies, Hearing Officer

SUBJECT: Mary Arcieri, Individually and as
Administratrix of the Estate of
Eugenio Arcieri

Petition for redetermination of a
deficiency or for refund of Personal
Income Taxes under Article 22 and
Unincorporated Business Taxes under
Article 23 of the Tax Law for the
years 1963, 1964 and 1965

Formal hearings were held in the above matter at the
New York City Office on February 1, and 19, 1969.

The issue involved is whether cash in the amount of
\$46,500.00 found in the safe deposit vault of decedent, Eugenio
Arcieri, and prorated over a three year period constitutes addi-
tional personal and unincorporated business tax income for the
years in issue.

Eugenio and Mary Arcieri filed a combined New York
State resident return for 1963 (separate returns on one form)
and joint resident State returns for 1964 and 1965. For 1963,
Eugenio reported Federal adjusted gross income of \$3,221.45 and
his wife, Mary, reported \$5,305.79. The Federal adjusted gross
income of the taxpayers for 1964 and 1965 amounted to \$7,466.41
and \$7,563.97, respectively. On said returns, Eugenio Arcieri
indicated business income from chemical manufacturing but filed
no unincorporated business tax returns for the years in issue.
Eugenio Arcieri died on February 23, 1966 and Mary Arcieri was
appointed Administratrix of his estate.

A field audit was made with respect to the returns of
the taxpayers for the years in issue. The decedent taxpayer,
prior to his death was self-employed as a chemical manufacturer.
His wife claimed that he was not very active during the years
1961 through 1965 because of his age, 78 years. Among the
decedent's assets was \$46,500.00 cash found in a safe deposit
box rented from First National City Bank, 349 East 149th Street,
Bronx, New York. Up to the year 1965 the decedent occupied an
office in downtown Manhattan. The decedent manufactured an
antacid preparation and also a chemical preparation used to
clean boilers. He maintained a checking account which was used
both for business and for personal expenses. From an analysis
of his checking account for the years 1963 through 1965, more
specifically in 1964, the decedent deposited more in his checking

account than the actual receipts represented by him on Schedule "C" of his Federal return. He required an additional \$2,732.00 (for 1964) to pay the business expenses which he claimed on Federal Schedule "C".

It is claimed that the cash in the safe deposit vault represented accumulations of savings from 1930 through 1950. No information was furnished the tax examiner with respect to the income of the decedent taxpayer prior to 1962. On March 27, 1967, statements of audit changes and notices of deficiency were issued imposing additional personal and unincorporated business taxes for 1963, 1964 and 1965 with interest in the amount of \$5,375.48.

At the time of his death, the estate of the decedent taxpayer amounted to approximately \$65,000.00 which consisted primarily of \$46,500.00 of cash in the safe deposit box. There was also found a savings account of about \$9,200.00 which the decedent received in connection with an action resulting from the death of his first wife. This amount is included in the \$65,000.00 gross estate. It is to be noted that the statement of audit changes prorated the \$46,500.00 (cash in safe deposit box) over a three year period, namely, \$15,500.00 during each of the years 1963, 1964 and 1965. It also included for 1964, additional income of \$2,732.00 mentioned above.

The instant case is to be distinguished from the case of Agnes Hellman as Executrix v. State Tax Commission, decided by the Appellate Division of the Supreme Court, Third Department, on May 28, 1968. In that case, the decedent, at the time of his death, had assets valued at \$1,145,801.30. Part of these assets consisted of \$42,500.00 in cash which had been deposited in the safe deposit box. In the cited case, the taxpayer maintained three bank accounts with balances in excess of \$35,000.00 each. In addition, the taxpayer had an annual income of about \$75,000.00 a year and very easily could have accumulated in savings the amount found in the safe deposit box. In addition, a reasonable explanation was given to account for said monies in said safe deposit box.

In the instant case, however, the taxpayer wife has failed to meet the burden of showing that the amount found in the cash deposit box, represented income on which tax had already been paid. The taxpayer wife has failed to supply any information with respect to the income of the decedent taxpayer prior to 1962. I am, therefore, of the opinion that the notice of deficiency should be sustained.

For the reasons stated above, I recommend that the decision of the Tax Commission in this matter be substantially in the form submitted herewith.

SS:GG
July 2, 1969

SOLOMON SIES
Hearing Officer

STATE TAX COMMISSION

STATE OF NEW YORK

IN THE MATTER OF THE PETITION

OF

**MARY ARCIERI, Individually
and as Administratrix of
the Estate of Eugenio
Arcieri**

**FOR REDETERMINATION OF A DEFICIENCY
OR FOR REFUND OF PERSONAL INCOME TAXES
UNDER ARTICLE 22 AND UNINCORPORATED
BUSINESS TAXES UNDER ARTICLE 23 OF THE
TAX LAW FOR THE YEARS 1963, 1964 AND
1965**

Mary Arcieri, individually and as Administratrix of the Estate of Eugenio Arcieri, having filed a petition for redetermination of a deficiency or for refund of personal income taxes under Article 22 and unincorporated business taxes under Article 23 of the Tax Law for the years 1963, 1964 and 1965 and hearings having been held in connection therewith at the office of the State Tax Commission, 80 Centre Street, New York, New York on February 1, and February 19, 1968 at which hearing the taxpayer Mary Arcieri appeared on February 19, 1968 and the taxpayer having been represented by Ferdinand R. Goglio and the matter having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That Eugenio and Mary Arcieri filed a combined New York State resident return for the year 1963 (separate return on one form) and joint resident returns for the years 1964 and 1965; that for 1963 Eugenio Arcieri reported Federal adjusted gross income of \$3,221.45 and his wife, Mary Arcieri, reported \$5,305.79; that the aforementioned taxpayers reported Federal adjusted gross income for 1964 and 1965 in the amounts of \$7,484.41 and \$7,563.97, respectively; that the taxpayer Eugenio

Arcieri indicated on said returns business income from chemical manufacturing but filed no unincorporated business tax returns for the years in issue; that Eugenio Arcieri died on February 23, 1966 and Mary Arcieri was appointed Administratrix of his Estate.

(2) That on March 27, 1967 statements of audit changes were issued against Mary Arcieri individually and as Administratrix of the Estate of Eugenio Arcieri for the years 1963, 1964 and 1965 as a result of field audit imposing additional personal and unincorporated business income taxes with interest for a total of \$5,341.37; that accordingly a notice of deficiency was issued therefor.

(3) That the decedent taxpayer prior to his death was self-employed as a chemical manufacturer; that he had manufactured an antacid preparation and also a chemical preparation used to clean boilers; that the decedent maintained a checking account which was used for both business and personal expenses; that no information was furnished to the auditor with respect to the income of the decedent taxpayer prior to 1962; that at the time of his death, the estate of the decedent taxpayer amounted to approximately \$65,000.00 which consisted primarily of the \$46,500.00 of cash in the safe deposit box plus a savings account in which \$9,200.00 was received by the decedent in connection with an action resulting from the death of his first wife in 1961 or 1962.

(4) That from an analysis of the checking account of the decedent taxpayer for the years 1963 through 1965 and more particularly in 1964 the decedent deposited more in his checking account than the actual receipts reported by him on Schedule "C" of his Federal income tax return for the year 1964; that he required an additional \$2,752.00 for 1964 to pay the business expenses which he claimed on his Federal Schedule "C" for said year; that the Statement of Audit changes with respect to 1964 included the aforementioned

\$2,752.00 as additional income; that the \$46,500.00 cash in the safe deposit box was prorated in the amount of \$15,500.00 for each of the years 1963, 1964 and 1965 and taxed as additional income for said years.

(5) That it is claimed that the cash in the safe deposit vault represented an accumulation of savings of the decedent taxpayer from 1930 through 1950; that no information was submitted with respect to the income of the decedent taxpayer for years prior to 1962, from which an inference could reasonably be drawn that the cash in the safe deposit box did, in fact, represent non-taxable income.

Based upon the foregoing findings and all of the evidence presented herein, the State Tax Commission hereby

DECIDES:

(A) That the taxpayer Mary Arcieri has failed to establish that the additional income in the safe deposit vault represented an accumulation of savings as claimed; that no information was submitted whatsoever to warrant a finding that the moneys in the safe deposit box actually represented savings from income previously reported and upon which a tax had been paid; that the moneys in the safe deposit vault represented additional personal and unincorporated business tax of the decedent taxpayer subject to personal and unincorporated business tax in accordance with the provisions of Articles 22 and 23 of the Tax Law.

(B) That accordingly, the Statement of Audit Changes and Notice of Deficiency for the years 1963, 1964 and 1965 are correct and do not include any tax or other charge which could not have been lawfully demanded; that the petition of the taxpayer Mary Arcieri individually and as Administratrix of the Estate of Eugenio Arcieri for redetermination of a deficiency of personal

and unincorporated business taxes for the years 1963, 1964 and 1965 is hereby denied.

DATED: Albany, New York this 23rd day of Oct. 1969.

STATE TAX COMMISSION

s/s Norman Gallman
President

s/s A. Bruce Manley
Commissioner

s/s Milton Koerner
Commissioner