

Income Tax Determination,
A-2
Rogers, Ethel

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ETHEL ROGERS

For a Redetermination of a Deficiency or
a Refund of Personal Income
Taxes under Article(s) 16 of the
Tax Law for the (Year(s) 1960 :

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

State of New York
County of Albany

LYNN HORODOWICH

, being duly sworn, deposes and says that

she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 20th day of November , 1969, she served the within
Notice of ~~Decision~~ (for Determination) by (~~certified~~) mail upon ETHEL ROGERS

(~~representative of~~) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mrs. Ethel Rogers, 26 East 63rd Street
New York, New York

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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (~~representative~~
~~of~~) 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

21st day of November , 1969.

Grace E. Pritchard

Lynn Horodowich

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ETHEL ROGERS

For a Redetermination of a Deficiency or
a Refund of Personal Income
Taxes under Article(s) 16 of the
Tax Law for the (Year(s) 1960

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

State of New York
County of Albany

LYNN HORODOWICH, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 20th day of November, 1969, she served the within Notice of ~~Decision~~ (or Determination) by (~~certified~~) mail upon Ethel Rogers (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: A. Jesse Goldstein, CPA, 350 Fifth Avenue New York, New York 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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative of) 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

21st day of November, 1969.

Grace E. Pritchard

Lynn Horodowich

DEPARTMENT OF TAXATION AND FINANCE

MEMORANDUM

TO: Edward Rook
FROM: Lawrence A. Newman
SUBJECT: Ethel Rogers
Article 16, year 1960
Expenses disallowed

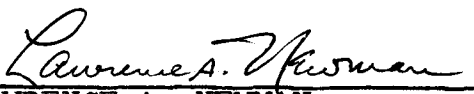
DATE October 22, 1969
OFFICE Hearing Unit

Pending

A formal hearing was held by Mr. Vincent P. Molineaux on September 21, 1967 on the question of the deductibility by the taxpayer of legal and accounting expenses.

The taxpayer's deceased spouse was executor of an estate, and was sued by the U.S. Treasury Department for unpaid interest due on an assessment of additional estate taxes. On their combined resident tax return (IT-208), Mr. & Mrs. Rogers elected to deduct these professional expenses from Mrs. Rogers income. Therefore, the assessment was imposed against her when the Income Tax Bureau disallowed the deduction.

There were no assets in the name of the estate to satisfy the Treasury claim because the assets had previously been distributed. Nonetheless, the proposed determination confirms the action of the Income Tax Bureau in holding that the legal and accounting expenses are proper expenses of the estate and not attributable to the executor's personal affairs or business interests.


LAWRENCE A. NEWMAN
Hearing Officer

LAN:pw

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Application

of

ETHEL ROGERS

DETERMINATION

For Revision or Refund of Personal
Income Taxes under Article 16 of
the Tax Law for the year 1960

Ethel Rogers, the taxpayer, has filed an application for revision or refund of personal income taxes under Article 16 for the year 1960. A formal hearing was held, and the taxpayer appeared through her representative, A. Jesse Goldstein, CPA.

Findings of Fact:

(1) The taxpayer, Ethel Rogers, and her husband, Herbert Rogers, deceased, filed a joint Federal return for the year 1960, and elected to file separate New York State income returns on combined New York State form IT-208.

Included in their Federal itemized deductions was the amount of \$6750.00 representing legal and accounting fees which had been deducted on their combined New York State return by the taxpayer, Ethel Rogers.

(2) By assessment no. AB-031925 dated November 20, 1962, the Income Tax Bureau of the Department of Taxation and Finance recomputed the personal income taxes of the taxpayer for the year 1960 after disallowing the said deduction of legal and accounting fees. The amount of additional personal income tax found due was \$604.19.

(3) The taxpayer's husband, Herbert Rogers, now deceased, was the surviving executor of the Estate of Mark H. Rogers, who died in the year 1930. The estate had become insolvent as a result of the distribution of its assets to the legatees. Subsequently, the United States Government sued Herbert Rogers as surviving executor for the unpaid interest on its determination of Federal estate taxes. The deduction of \$6750 represented the legal and accounting fees paid by Herbert Rogers in defending this law suit. Ultimately, a settlement was made.

(4) The taxpayer, Ethel Rogers, contends that the professional fees were incurred for the protection of the interests of Herbert Rogers and therefore a proper deduction.

(5) The taxpayer has failed to prove that the payment in the amount of \$6750 was ordinary and necessary to either the production or collection of income or to the management, conservation or maintenance of property held for the production of income in the trade or business of the taxpayer.

The professional expenses in issue were incurred by the late Herbert Rogers in his capacity as executor of the Estate of Mark Rogers, arising out of the conduct of the affairs of the Estate. The legal and accounting fees are therefore, the expenses of the Estate, and not deductible by the taxpayer.

(6) The taxpayer further contends that if the notice of additional assessment is sustained, then the amount of \$594.05 listed on Form IT-208 as an overpayment by Herbert Rogers should be applied as a credit against the additional assessment.

(7) On Form IT-208 for the year 1960, however, the taxpayer and her husband requested at item 19 to have the overpayment in question credited toward the estimated tax for 1961.

Determination:

(A) The deduction of \$6750 for legal and accounting fees was not a validly deductible expense by Ethel Rogers or her deceased spouse Herbert Rogers.

(B) The deduction of \$6750 was properly disallowed by the Income Tax Bureau of the Department of Taxation and Finance.

(C) The Notice of Additional Assessment for the year 1960, numbered AB-031925 was correctly issued, and the amount of tax stated therein is due and owing, together with lawful interest charges.

(D) The amount shown on Form IT-208 (1960) as an overpayment by Herbert Rogers (deceased) is not available as a credit against the assessment in issue for the year 1960.

(E) The taxpayer's application for revision or refund under Article 16 of the Tax Law for the year 1960 is denied.

DATED: November 19, 1969

STATE TAX COMMISSION

Norman Galtman
PRESIDENT

Bruce Hawley
COMMISSIONER

Milton Koenig
COMMISSIONER

STATE OF NEW YORK
STATE TAX COMMISSION

IN THE MATTER OF THE APPLICATION :
OF :
HERBERT ROGERS (DECEASED) : DECISION
AND ETHEL ROGERS :
FOR REVISION OR REFUND OF :
PERSONAL INCOME TAXES :
UNDER ARTICLE 16 OF THE :
TAX LAW FOR THE YEAR 1960 :
:

OMIT
BRACKETED
MATERIAL

Ethel Rogers, the taxpayer, having filed an application for revision or refund of additional personal income taxes assessed for the year 1960, [and such application having been denied], and a hearing having been held at the office of the State Tax Commission at 80 Centre Street, New York, New York, on September 21, 1967, before Vincent P. Molineux, Hearing Officer, at which hearing the taxpayer was represented by A. Jesse Goldstein, C.P.A., and the matter having been duly examined and considered,

The State Tax Commission hereby finds:

(1) By notice of additional assessment no. AB-031925 dated November 20, 1962, the State Tax Commission recomputed the personal income taxes of the taxpayer for the year 1960 by disallowing the deduction of legal and accounting fees in the amount of \$6750.00. The amount of additional personal income tax found due on recomputation was \$604.19.

(2) The taxpayer, Ethel Rogers, and her husband, Herbert Rogers, now deceased, filed a joint Federal return for the year 1960, and elected to file separate New York State income returns on combined New York State form IT-208,