

STATE OF NEW YORK
STATE TAX COMMISSION

Kunkel, Martha B.
Personal Income

In the Matter of the Petition

of

MARTHA B. KUNKEL

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) 1954, 1955,
1956 and 1957

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

State of New York
County of Albany

Linda Wilson, 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 2nd day of March, 1971, she served the within
Notice of Decision (or Determination) by (certified) mail upon MARTHA B.

KUNKEL (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mrs. Martha B. Kunkel
20 First Avenue
Gloversville, 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

2nd day of March, 1971.

Martha Kunkel

Linda Wilson

STATE OF NEW YORK
STATE TAX COMMISSION

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she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 2nd day of March, 1971, she served the within
Notice of Decision (or Determination) by (certified) mail upon GEORGE J.

DORFMAN & CO. (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: George J. Dorfman & Co.
38 No. Main Street
Gloversville, 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

2nd day of March, 1971.

Linda Wilson
Martha Kunkel

STATE OF NEW YORK

STATE TAX COMMISSION

IN THE MATTER OF THE APPLICATION

OF

MARTHA B. KUNKEL

DETERMINATION

FOR REVISION OR REFUND OF PERSONAL
INCOME TAXES UNDER ARTICLE 16 OF THE
TAX LAW FOR THE YEARS 1954, 1955,
1956 AND 1957

Martha B. Kunkel having filed an application for revision or refund of personal income taxes under Article 16 of the Tax Law for the years 1954, 1955, 1956 and 1957, and a hearing having been held in connection therewith at the State Campus, Albany, New York, on November 10, 1965, at which hearing taxpayer's representative, Robert L. Dorfman, C.P.A., appeared and testified, and the record having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That in 1948 the taxpayer was the owner of a one-third interest in certain land in Ohio; that the land in that year was sold and conveyed to the North American Coal Corporation for the sum of \$750,000.00; that of the price paid by the purchaser \$150,000.00 was paid in cash and the balance by promissory notes payable in ten equal annual installments; that of the cash received, one-third, or \$50,000.00 was paid to the taxpayer, and that of the notes, one-third, or \$200,000.00 of face value thereof were payable to the taxpayer; and that of the total recognized gain, one-third was allocable to the

taxpayer as income to her.

(2) That the taxpayer filed a personal income tax return for 1948 on which she elected to report the gain on the sale of her interest in the land in Ohio on the installment basis, reporting the proportionate part of the gain of each installment in the year received, pursuant to section 358-a of the Tax Law.

(3) That in 1949 on presentation of the first note for payment, the check in payment thereof was seized and attached pursuant to a garnishee order in a stockholder's derivative suit commenced on behalf of the Jefferson Company, a corporation of which the taxpayer was an officer, in which suit it was claimed that taxpayer had wrongfully acquired her title to the land in Ohio in violation of an agreement with the stockholders of the Jefferson Company and in violation of a fiduciary duty owed to the corporation; that thereafter the North American Coal Corporation, the purchaser of the land, commenced an interpleader proceeding and deposited the checks due for subsequent annual note redemptions and interest with the court; that in 1957 the litigation was terminated favorably to the taxpayer and the proceeds of the checks in payment of notes payable to her during the years 1949 to 1957 inclusive, together with accumulated interest, were released to her.

(4) That for the years 1949 to 1956 inclusive the taxpayer filed personal income tax returns, omitting any portion of the gain on the sale of the Ohio land; that for 1957 the taxpayer filed a personal income tax return, reporting \$167,497.12 of the capital gain received in that year; and \$32,400.00 interest

income on the accumulated notes received in that year, reporting tax due of \$5,390.69.

(5) That the taxpayer reported Federal audit changes for the years 1954, 1955, 1956 and 1957, in which her liability for Federal income taxes was reduced for 1957 and increased for prior years based upon Federal audit findings that installments due in prior years and paid into court pursuant to orders in connection with the stockholder's derivative action were constructively received by taxpayer during those years; that the taxpayer now contends that her returns for the years 1949 through 1957, inclusive, were not correct; that said returns should have included the proportionate gain and interest income for each year as the same were paid into court on the ground that they were, in such years, constructively received.

(6) That the proceeds of the notes and interest payable to the taxpayer during the years 1949 through 1956 inclusive, and paid into court pursuant to orders of the courts pending the outcome of the stockholder's derivative suit involving the Jefferson Company were not received by the taxpayer or credited to her without any substantial limitation or restriction as to time or manner of payment or condition upon which payment was to be made; that the same were actually received by her in 1957.

Based upon the foregoing findings and all of the evidence presented herein,

The State Tax Commission hereby

DETERMINES:

(A) That in 1948 the taxpayer made a binding election on her income tax return for that year to report the gain on the sale of real property on the installment basis pursuant to

section 358-a of the Tax Law.

(B) That during the years 1949 through 1956 the taxpayer did not receive, either actually or constructively, any payments on account of the sale of her land; that in 1957 the taxpayer actually received installment payments attributable to the sale which included a proportionate amount of the gain on the sale in the sum of \$167,497.12 and interest thereon in the sum of \$32,400.00.

(C) That, accordingly, the taxes reported on the income tax returns filed by the taxpayer for 1954, 1955, 1956 and 1957 were correct; that the same did not include any taxes or other charges not due and owing or which could not have been lawfully demanded and that the taxpayer's application for revision or refund be and the same is hereby denied.

Dated: Albany, New York, the 1st day of March, 1971.
March 1, 1971

STATE TAX COMMISSION

Lawrence Gelhorn
PRESIDENT

Bruce Manley
COMMISSIONER

Milton Green
COMMISSIONER