

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
of
HAROLD HYMAN (deceased) &
JUDITH HYMAN
For a Redetermination of a Deficiency or
a Refund of Personal Income
Taxes under Article(s) 22 of the
Tax Law for the (Year(s)) 1962

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

State of New York
County of Albany

Martha Funaro, 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 16th day of March, 1972, she served the within
Notice of Decision (or Determination) by (certified) mail upon Judith Hyman (dec.) &

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: Mrs. Judith Hyman
40 East 84th Street
New York, New York 10028

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

16th day of March, 1972

Rae Zimmerman

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

HAROLD HYMAN (Deceased) & :
JUDITH HYMAN :

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

For a Redetermination of a Deficiency or :
a Refund of Personal Income :
Taxes under Article(s) 22 of the :
Tax Law for the (Year(s) 1962 :

State of New York
County of Albany

Martha Funaro, 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 16th day of March , 1972 , she served the within Notice of Decision (or Determination) by (certified) mail upon Samuel H. Laitman, Esq. (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Samuel H. Laitman, Esq.
c/o Weil, Gotshal & Manges
767 5th Avenue
New York, New York 10022
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

16th day of March , 1972.

Rae J. Janssen

Martha Funaro



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A

STATE CAMPUS

ALBANY, N. Y. 12226

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION

NORMAN F. GALLMAN, ACTING PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

STATE TAX COMMISSION

HEARING UNIT

EDWARD ROOK

SECRETARY TO

COMMISSION

ADDRESS YOUR REPLY TO

Dated: Albany, New York

March 16, 1972

**Mrs. Judith Hyman
40 East 84th Street
New York, New York 10028**

Dear Madam:

Please take notice of the **DECISION** of
the State Tax Commission enclosed herewith.

Please take further notice that pursuant to **section 690**
the Tax Law any proceeding in court to review an adverse decision
must be commenced within **4 Months** after
the date of this notice.

Any inquiries concerning the computation of tax due or refund allowed
in accordance with this decision or concerning any other matter relat-
ing hereto may be addressed to the undersigned. These will be referred
to the proper party for reply.

Very truly yours,

Nigel G. Wright

HEARING OFFICER

cc Petitioner's Representative
Law Bureau

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
HAROLD HYMAN (deceased) & JUDITH HYMAN	:	DECISION
for a Redetermination of a Deficiency or for Refund of Personal Income Taxes under Article 22 of the Tax Law for the Year 1962.	:	

The Estate of Harold Hyman on behalf of Harold Hyman and Judith Hyman filed a petition under section 689 of the Tax Law for the redetermination of a deficiency in personal income tax imposed under Article 22 of the Tax Law for the year 1962. A hearing was duly scheduled and held before Nigel G. Wright, Hearing Officer, on April 8, 1971. The Income Tax Bureau was represented by Edward H. Best, Esq., (Francis X. Boylan, Esq. of Counsel). The petitioners did not appear in person but Samuel H. Lartman, Esq., of Weil, Gotshal & Manges who had represented the executor, Henry Hyman, who himself has since died with no successor having been appointed, appeared on behalf of petitioners to avoid a default in appearance and to request that the file of the Income Tax Bureau be submitted to the State Tax Commission for their consideration.

The record of said hearing and the file of the Income Tax Bureau has been duly examined and considered.

ISSUE

The issues in this case are (a) the extent of the burden of proof when a deficiency notice is issued after three years but

before six years from the filing of the return under section 683(d) of the Tax Law and, (b) whether such burden has been met on the facts of a case where the deficiency notice has been issued because of cash found in a safety deposit box.

FINDINGS OF FACT

1. Harold Hyman died on May 16, 1962. His 1962 income tax return was timely filed on April 15, 1963. It showed a total income of \$7,783.52 and a total New York income of \$7,637.29.

2. When Mr. Hyman died, the sum of \$20,915.00 in small bills was found in a safe deposit box in his name. Mr. Hyman had rented the box since 1942.

3. The deficiency notice was issued on February 26, 1968, over 4 1/2 years after the relevant tax return was filed. It increased income by the \$20,915.00 for cash found in the safe deposit box, made appropriate adjustments in the medical deduction and found a tax due of \$1,272.21 and interest due of \$371.23 for a total deficiency of \$1,643.44.

4. Mr. Hyman's bookkeeper asserts by affidavit that from 1954 to his death Mr. Hyman would place a part of the proceeds of each salary check in a safe deposit box because of difficulties Mr. Hyman was having with his wife's spending habits. Mr. Hyman's Federal estate tax return showed many debts which had been incurred by his wife.

5. Mr. Hyman's gross estate for Federal estate tax purposes was about \$877,000. He had been an officer in three small corporations in which he had an equity interest. There is no evidence that Mr. Hyman in his business or otherwise frequently handled a large

volume of cash or that he engaged in illegal transactions.

CONCLUSIONS OF LAW

A. Since the deficiency notice was issued more than three years after the appropriate return was filed, the Income Tax Bureau has the burden of proof to show that one of the exceptions to the three year statute of limitations is applicable. To come within section 683(d) of the Tax Law, the Bureau must show that amounts equal to 25% of the adjusted gross income stated in the return were omitted from the return and that such amounts constitute taxable income.

B. Taxable income is not shown by the mere existence of cash in a safety deposit box but may be shown by circumstantial evidence surrounding the keeping of such cash. The circumstantial evidence in this case is, at best, speculative. Taxable income has not been proven.

DECISION

The petition is granted and the deficiency is cancelled.

DATED: Albany, New York
March 16, 1972

STATE TAX COMMISSION

Norman Gallman

COMMISSIONER

Bruce Manley

COMMISSIONER

Melvin Krumm

COMMISSIONER