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STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

CARL R. SPIRO

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, 1963 &
1964

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 31st day of March, 1972, she served the within
Notice of Decision (or Determination) by (certified) mail upon Carl R. Spiro

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

wrapper addressed as follows: Carl R. Spiro
2709 Ocean Avenue
Brooklyn, New York 11229

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

31st day of March, 1972.

George S. Van Patten

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

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AFFIDAVIT OF MAILING
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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 31st day of March, 1972, she served the within Notice of Decision (or Determination) by (certified) mail upon Max Grill, C.P.A.

(representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Max Grill, C.P.A.
250 West 57th 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

31st day of March, 1972.

James S. Van Patten

Martha Funaro



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE
BUILDING 9, ROOM 214A
STATE CAMPUS
ALBANY, N. Y. 12226

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 31, 1972

Carl R. Spiro
2709 Ocean Avenue
Brooklyn, New York 11229

Dear Mr. Spiro:

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

Please take further notice that pursuant to **section 690 of**
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

CARL R. SPIRO

for a Redetermination of a Deficiency
or for Refund of Personal Income Taxes :
under Article 22 of the Tax Law for the
Years 1962, 1963 and 1964 :

DECISION

The taxpayer having filed a petition under Section 689 of the Tax Law for a redetermination of a deficiency or for refund of personal income taxes under Article 22 of the Tax Law for the years 1962, 1963 and 1964, and a hearing having been held before Nigel G. Wright, Hearing Officer, on May 5, 1970, and the record having been duly examined and considered.

The State Tax Commission hereby

FINDS:

1. The issue in the case is whether an estate of a decedent should be considered as having been terminated prior to the taxable years in question under Federal Internal Revenue Regulation 1.641(b)-3 so that the income of the taxpayer should include amounts earned by the estate (see Reg. 20NYCRR 116.4) although not distributed by it.

2. The deficiencies, after crediting taxes paid by the estate of Irving W. Spiro, amount to \$345.71 for 1962, \$447.40 for 1963, and \$272.54 for 1964.

3. Irving W. Spiro died on December 5, 1955. At the time of his death, he was the owner and holder of all of the issued and outstanding stock of Irjo Realty Corporation, whose sole asset was a

walk-up apartment house at 66 West 138th Street, New York City, New York. Under his will, he bequeathed said stock in trust and provided that all earned income from said property be paid to his widow, Rose Spiro, during her life and that upon her death the trust would terminate and the trust assets be paid over to his brother, Carl R. Spiro, the petitioner herein.

The remainder of the estate, which included decedent's partnership interest with said Carl R. Spiro and said Rose Spiro in a partnership which owned other real estate, was devised to Carl R. Spiro. Said Carl R. Spiro was a co-executor of the estate.

4. The estate distributed to Rose Spiro, the income from the 138th Street property and took a deduction for the amounts distributed. It distributed no other income at any time although it had federal taxable income, after distributions, of from \$3,000 to \$5,000 during the years in question.

5. The estate taxes on the estate were paid in 1957 and 1958. The trust for the widow was never set up separately from the estate. The corporation was liquidated by the estate and the estate holds the 138th Street real estate directly. The widow is still alive. Taxpayer Carl R. Spiro died in 1969. The executors considered the estate closed in 1965 and filed no fiduciary income tax returns for later years.

6. While the assertion was made that the estate had not been closed earlier because of "complexities" no explanation was offered as to the nature of such complexities and no evidence was introduced on the issue.

Upon the foregoing findings and all the evidence in the case

The State Tax Commission hereby

DECIDES:

A. The taxpayer has not sustained the burden of proof that there were legitimate reasons why the estate was still open in the

taxable years in question.

B. The petition is denied and the deficiencies are sustained together with such interest, if any, as may be due pursuant to section 684 of the Tax Law.

DATED: Albany, New York
March 31, 1972

STATE TAX COMMISSION

Wesley Galbraith

COMMISSIONER

Bruce Mandley

COMMISSIONER

Melvin I. Green

COMMISSIONER