

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
MARGARET P. TUOHY AS ADMINISTRATRIX  
OF THE ESTATE OF  
FLORENCE E. CARROLL :  
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) 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 8th day of August , 19 72, she served the within Notice of Decision (or Determination) by (certified) mail upon Margaret P. Tuohy, Administratrix (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Margaret P. Tuohy,  
50 Plaza Street  
Brooklyn, 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

8th day of August , 1972.

Lynn Wilson

Martha Funaro

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
MARGARET P. TUOHY AS ADMINISTRATRIX  
OF THE ESTATE OF FLORENCE E. CARROLL

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) 1964

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 8th day of August , 1972 , she served the within  
Notice of Decision (or Determination) by (certified) mail upon Jacob Perelson, 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: Jacob Perelson, C.P.A.  
66 Court Street  
Brooklyn, New York 11201

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

8th day of August , 1972

Lynn Wilson

Martha Funaro



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

NORMAN F. GALLMAN, PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

BUILDING 9, ROOM 214A

STATE CAMPUS  
ALBANY, N. Y. 12227

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION  
HEARING UNIT

EDWARD ROOK  
SECRETARY TO  
COMMISSION

ADDRESS YOUR REPLY TO

**Dated:** Albany, New York

**August 8, 1972**

**Margaret P. Tucky  
50 Plaza Street  
Brooklyn, New York**

**Dear Ms. Tucky:**

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

Please take further notice that pursuant to section(s)  
**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 relating 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

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In the Matter of the Petition	:	
of	:	
MARGARET P. TUOHY	:	
AS	:	
ADMINISTRATRIX OF THE ESTATE OF	:	DECISION
FLORENCE E. CARROLL	:	
for a Redetermination of a Deficiency or	:	
for Refund of Personal Income Taxes under	:	
Article 22 of the Tax Law for the Year	:	
1964.	:	

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Margaret P. Tuohy, as administratrix of the Estate of Florence E. Carroll, filed a petition for the redetermination of a deficiency in personal income taxes under Article 22 of the Tax Law for the year 1964. A hearing was held on June 22, 1971 before Nigel G. Wright, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York City. The petitioner was represented by Jacob Perelson, C.P.A. The Income Tax Bureau was represented by Edward H. Best, Esq., (Francis X. Boylan, Esq., of Counsel). The record of said hearing has been duly examined and considered.

ISSUE

The issue in this case is whether certain cash found in a safety deposit box owned by decedent represented taxable income to her.

FINDINGS OF FACT

1. Mrs. Florence E. Carroll died on March 22, 1964 at the age of 69. Her husband had died previously on August 25, 1963.
2. After the death of Mrs. Carroll, the sum of \$22,300.00 was found in a safe deposit box rented in the name of Mr. Carroll, on which Mrs. Carroll was a deputy. The box had been rented since 1955. Mr. Carroll left an estate of very small value consisting primarily

of the cash received for her interest in her home and the cash ✓  
here in question.

3. Mrs. Carroll had been hospitalized intermittently at the Middletown State Hospital from 1949 to 1951, from December, 1957 through October, 1961 and from August, 1962 to the date of her death on March 22, 1964. Her certificate of death indicates that she had suffered a depressive type of psychosis for over six years.

4. Mr. Carroll had been a clerk in the Motor Vehicle Department in Bronx County until about 1958 when he became a clerk in the office of the County Clerk of Bronx County and continued in that position until his death in 1963 at the age of 68.

5. Mrs. Carroll and her husband had resided in a three story brownstone located on 140th Street in the Bronx with two sisters of Mrs. Carroll. The house was owned one-quarter by Mrs. Carroll and the remainder by the two sisters and the children of a predeceased brother of Mrs. Carroll. The house was the subject of a condemnation award in the amount of \$16,000.00 in 1964 paid after the death of Mrs. Carroll. Mr. and Mrs. Carroll had lived very modestly. A son-in-law in testimony described Mrs. Carroll as being very frugal and fearful of being without funds.

6. Mrs. Carroll had filed tax returns for 1961 and 1962. These were received by the Department but later were destroyed. No return was filed for 1963 though one was due on April 15, 1964, after her death. No return was filed for 1964.

7. The deficiency notice is dated January 22, 1968 and is in the amount of \$1,360.00 plus interest of \$225.96 for a total of \$1,585.96.

#### CONCLUSIONS OF LAW

The evidence indicates that the cash here in question was not received by Mrs. Carroll in 1964 nor in the years immediately preceding

1964. Any assertion that the money was income prior to 1964 to either Mrs. Carroll or to Mr. Carroll is purely speculative. The ordinary three year limitations period having expired on such years before the deficiency was issued, the burden of proof that the extended limitations period would apply by reason of a 25% omission from adjusted gross income is on the Income Tax Bureau and such burden has not been met.

DECISION

The petition is granted and the deficiency is cancelled in its entirety.

DATED: Albany, New York

*August 8, 1972*

STATE TAX COMMISSION

*Norman Seltman*  
\_\_\_\_\_  
COMMISSIONER

*Bruce Mosley*  
\_\_\_\_\_  
COMMISSIONER

*Milton Krumm*  
\_\_\_\_\_  
COMMISSIONER