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STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ROBERT C. FRYER & MARTHA J. FRYER

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) 1969

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

State of New York
County of Albany

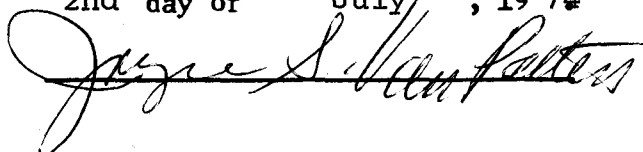
Martha Funaro , being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 2nd day of July , 1974, she served the within
Notice of Decision (or Determination) by (certified) mail upon Robert C. &
Martha J. Fryer (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mr. & Mrs. Robert C. Fryer
58 Half Moon Bend
Coronado, California 92118

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 July , 19 74







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
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

STATE TAX COMMISSION
Mario A. Procaccino

~~JOHN J. SALAMANO, JR.~~ PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

ADDRESS YOUR REPLY TO

Dated: Albany, New York

July 2, 1974

Mr. & Mrs. Robert C. Fryer
58 Half Moon Bend
Coronado, California 92118

Dear Mr. & Mrs. Fryer:

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 deci-
sion must be commenced within **4 Months**
from 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 relative
hereto may be addressed to the undersigned.
These will be referred to the proper party for
reply.

Very truly yours,

L. Robert Leisner

HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
ROBERT C. FRYER and MARTHA J. FRYER : DECISION
for Redetermination of a Deficiency or :
for Refund of Personal Income Tax under :
Article 22 of the Tax Law for the Year :
1969. :

Petitioners, Robert C. Fryer and Martha J. Fryer, petitioned for a redetermination of deficiencies in personal income tax under Article 22 of the Tax Law for the year 1969.

The case was submitted for decision on information contained in the file.

ISSUE

Were periodic payments received by petitioner, Martha J. Fryer, in 1969, alimony and therefore taxable as income?

FINDINGS OF FACT

1. Petitioners, Robert C. Fryer and Martha J. Fryer, timely filed a New York State income tax return for the year 1969.

2. A Notice of Determination of deficiencies in personal income tax for the year 1969 was issued on January 29, 1973, against the taxpayers under File No. 9-36504440.

3. The taxpayers petitioned for redetermination of the deficiencies.

4. Petitioners, Robert C. Fryer and Martha J. Fryer, did not include in their New York State taxable income for 1969, amounts received from Martha J. Fryer's divorced husband, James Collard, aforesaid amounts being paid pursuant to a separation agreement dated June 22, 1964. The agreement did not specifically designate or fix amounts for child support.

5. James Collard deducted on his 1969 returns the sum of \$2,600.00 as alimony paid over to petitioner, Martha J. Fryer, for the support and maintenance of the wife and children. He did not claim exemptions for the children.

6. On November 6, 1972, the Family Court of the State of New York, County of Erie, in a proceeding entitled "Martha J. Fryer, Petitioner Against James Collard, Respondent", issued an order modifying the decree of June 22, 1964, to the effect of making all prior and future payments made by respondent to petitioner incident to the divorce, child support and not alimony.

CONCLUSIONS OF LAW

A. That, periodic payments were received by petitioner, Martha J. Fryer, during the year 1969 from her divorced husband for the support and maintenance of herself and their minor children without a specific designation in the June 22, 1964 separation agreement as to the portion for the support of the children and, therefore, the whole of such amounts were includible in her income in accordance with the meaning and intent of section 71 of the Internal Revenue Code. See Commissioner v. Lester, 366 U.S. 299 (1961)

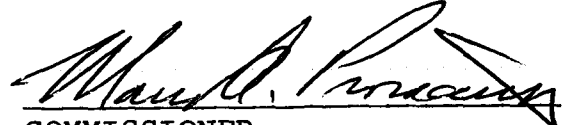
B. That the petitioners did not show that the order of the Family Court of November 6, 1972, reforming the 1964 separation agreement between petitioner, Martha J. Fryer, and James Collard, worked retroactively to the extent of indicating that the parties had contemplated that all sums paid to petitioner, Martha J. Fryer, were to be for child support. See Commissioner v. Lester, supra.

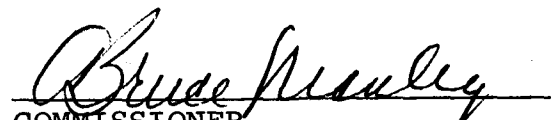
C. That the petition of Robert C. Fryer and Martha J. Fryer is in all respects denied and the Notice of Deficiency issued January 29, 1973, is sustained.

DATED: Albany, New York

July 2, 1974

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER