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STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

BARBARA SCHACHT TRUST

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) 1961, 1962 &
1963

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 25th day of June , 1974 , she served the within
Notice of Decision (or Determination) by (certified) mail upon Aleen Schacht, et al.

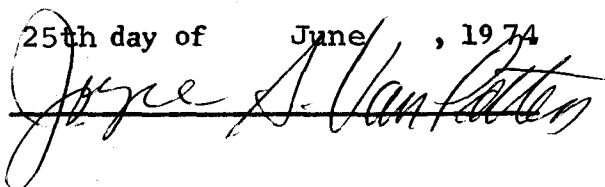
(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Aleen Schacht, et al.

Trustees for Barbara Schacht
216 Crestwood Drive
South Orange, New Jersey
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

25th day of June , 1974





STATE OF NEW YORK
STATE TAX COMMISSION

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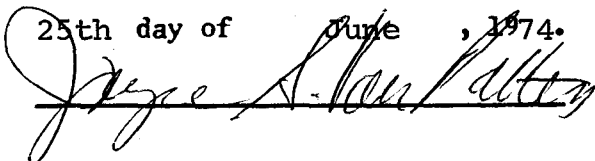
Martha Funaro , being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 25th day of June , 19 74, she served the within
Notice of Decision (or Determination) by (certified) mail upon William Slivka, Esq.

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: William Slivka, Esq.
Sherman, Feigen & Slivka
292 Madison Avenue
New York, New York 10017
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

25th day of June , 1974.







STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A
STATE CAMPUS
ALBANY, N. Y. 12227

AREA CODE 518
457-2655, 6, 7

STATE TAX COMMISSION
Mario A. Procaccino
~~XXXXXXXXXX~~ PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

Edward Rook
457-6275

Dated: Albany, New York

June 25, 1974

Mrs. Aileen Schacht, et al.
Trustees for Barbara Schacht
216 Crestwood Drive
South Orange, New Jersey

Dear Mrs. Schacht:

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,

EDWARD ROOK
~~XXXXXXXXXX~~
Secretary to the
State Tax Commission

cc Petitioner's Representative
Law Bureau

STATE OF NEW YORK
STATE TAX COMMISSION

-----:
IN THE MATTER OF THE PETITIONS

OF

BARBARA SCHACHT TRUST

DECISION

FOR A REDETERMINATION OF A DEFICIENCY
OR FOR REFUND OF INCOME TAXES UNDER
ARTICLE 22 OF THE TAX LAW FOR THE
YEARS 1961, 1962 and 1963
-----:

The taxpayer trust herein having filed a petition for a refund of income taxes under Article 22 of the Tax Law for the years 1961, 1962 and 1963 and a hearing having been held in connection therewith at the office of the State Tax Commission, 80 Centre Street, New York, New York, on March 8, 1967 before Francis V. Dow, Hearing Officer of the Department of Taxation and Finance at which hearing the taxpayer was represented and the record having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That the taxpayer trust filed fiduciary tax returns for the years 1961, 1962 and 1963; that for 1961 it reported New York taxable income of \$39,581.81 and paid New York income tax of \$3,318.18; that for 1962, it reported New York taxable income of \$19,666.18 and paid New York income tax of \$1,326.62; that for 1963, it reported New York taxable income of \$19,467.14 and paid New York income of \$1,306.71.

(2) That the taxpayer filed a petition for a refund of income taxes paid for the years 1961, 1962 and 1963 contending that the imposition of income tax by New York State upon it was in violation of due process and it was not subject to New York State's taxing powers.

(3) That the taxpayer is an inter vivos trust which was created by Lawrence Schacht on December 18, 1952; that at the time of the creation of the trust, Lawrence Schacht was domiciled in New York State; that there are three trustees of the trust; that the trustees are Aleen Schacht, who resides in New Jersey, Raymond Horowitz, who resides in New York and Edwin D. Roemer, who resides in California.

(4) That the beneficiary of the trust is Michael Schacht; that no income from the trust was distributed to him during the years in question; that the trust agreement provided that the trustees shall have the power to pay the net income of the trust to the beneficiaries as they deem proper and to accumulate the balance of such income.

(5) That the property of the trust at the time of its creation and during the years in issue, consisted primarily of real property located in New Jersey; the other assets in the trust consisted of a small number of stocks and bonds, physically in New Jersey and a small New York bank account.

(6) That the trust was administered in New Jersey; that no commissions were paid to the trustees for their services.

Based upon the foregoing findings and all of the evidence presented herein, the State Tax Commission hereby

DECIDES:

(A) That the taxpayer is a resident trust within the intent and meaning of section 605 of the Tax Law since it was created by a person domiciled in New York.

(B) That nevertheless the income of the trust is not subject to New York income tax since under the facts herein the imposition of a tax would extend the taxing power of the State beyond its border. Mercantile Safe Deposit Co. v. Murphy, 19 A D 2d 765, aff'd 15 N Y 2d 579.

(C) That accordingly the taxpayer's petition for refund of income taxes paid for the years 1961, 1962 and 1963 is hereby granted.

Dated: Albany, New York this 21st day of ~~May~~ ^{JUNE} 1974.

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER