

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

NANETTE HAHN DALY

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Personal Income :  
Taxes under Article (s) 22 of the :  
Tax Law for the Year (s) ~~or Period(s)~~ :  
1966.

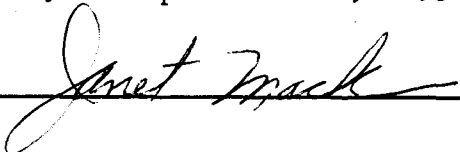
State of New York  
County of Albany

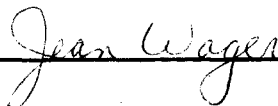
Jean Wager , being duly sworn, deposes and says that  
she is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 29th day of September , 1976 , she served the within  
Notice of Decision by (certified) mail upon Nanette Hahn  
Daly (~~representative of~~) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Nanette Hahn Daly  
c/o Brown Brothers Harriman & Company  
59 Wall St.  
New York, N.Y. 10005  
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 Postal Service within the State of New York.

That deponent further says that the said addressee is the (~~representative~~  
~~of the~~) 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

29th day of September , 1976.

  
\_\_\_\_\_

  
\_\_\_\_\_

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

NANETTE HAHN DALY

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Personal Income :  
Taxes under Article(s) 22 of the :  
Tax Law for the Year(s) ~~1965-1966~~ :  
1966.

State of New York  
County of Albany

Jean Wager, 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 29th day of September, 1976, she served the within  
Notice of Decision by (certified) mail upon Charles B. Lauren, Esq.

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

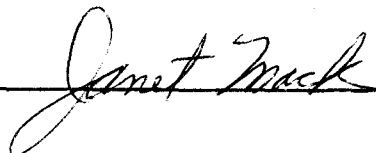
as follows: Charles B. Lauren, Esq.  
c/o Chadbourne, Parke, Whiteside & Wolff  
25 Broadway  
New York, N.Y. 10004

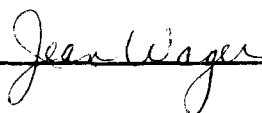
and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the (representative  
of the) 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

29th day of September, 1976

  
\_\_\_\_\_

  
\_\_\_\_\_



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU  
STATE CAMPUS  
ALBANY, N.Y. 12227

ADDRESS YOUR REPLY TO

September 29, 1976

TELEPHONE: (518) ~~457-3850~~

┌  
Nanette Hahn Daly  
c/o Brown Brothers Harriman & Company  
59 Wall St.  
New York, N.Y. 10005

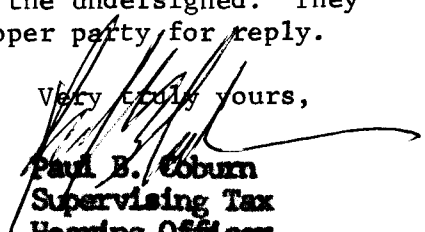
Dear Mrs. Daly:

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

Please take further notice that pursuant to  
Section(x) 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.

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. They  
will be referred to the proper party for reply.

Very truly yours,

  
Paul B. Coburn  
Supervising Tax  
Hearing Officer

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

---

In the Matter of the Petition	:	
of	:	
NANETTE HAHN DALY	:	DECISION
for a Redetermination of a Deficiency or	:	
for Refund of Personal Income Taxes under	:	
Article 22 of the Tax Law for the Year 1966.	:	

---

Nanette Hahn Daly filed a petition under section 689 of the Tax Law for a redetermination of a deficiency in personal income tax under Article 22 of the Tax Law for the year 1966.

Said deficiency was asserted by notice issued July 17, 1970 under file number 66188499 and is in the amount of \$2,334.21 plus interest of \$459.77 for a total of \$2,793.98.

In lieu of a hearing petitioner submits his case to the State Tax Commission on the file of the Income Tax Bureau.

Said file has been duly examined and considered.

ISSUE

The issue in this case is whether petitioner who received amounts under a "marital deduction" bequest in the will of her deceased husband is a "beneficiary succeeding to the property of the estate" as defined in U.S. Treasury Reg. §1.642(h)-3 so as to

qualify for the "excess deductions" of the Estate upon its termination.

FINDINGS OF FACT

1. Paul M. Hahn, the husband of petitioner herein, died on August 9, 1963.

2. The Estate of Paul M. Hahn filed fiduciary income tax returns on the basis of a fiscal year ending July 31, 1966. The estate claimed on its final return many deductions including deductions for administration expenses not claimed as Estate Tax deductions. This resulted in "excess" deductions, as defined in section 642(h) of the Internal Revenue Code in the amount of \$29,528.44.

3. Nanette Hahn Daly, the petitioner herein, claimed as deductions on her 1966 tax return the excess deductions of the estate to the extent of \$23,522.20. The calculation of this amount is not in dispute.

4. The Last Will and Testament of Paul M. Hahn provided for several specific bequests and then, in Article Third, disposes of the residuary estate which is defined as the residue after payment of all other bequests and devises and all debts and administration expenses but before payment of death taxes. The disposition made

is an outright grant of part of said residue to his widow, the petitioner herein, and a grant of the balance of said residue in trust for the benefit of his widow with discretionary powers of termination in trustees and a testamentary power of appointment in his wife.

5. The outright grant to petitioner is stated to be "that fraction of my residuary estate" of which the numerator shall be the amount by which one-half of the adjusted gross estate exceeds the total of other amounts qualifying for the marital deduction and the denominator shall be the value of the residuary estate. This fraction is to be computed with the values fixed in the Federal Estate Tax proceedings.

6. The petitioner's share of the residuary estate as computed in the executor's final account was 60.69639%. This fraction was computed without the administration expenses here in issue. The value of the residuary estate to be distributed was computed with deduction for administration expenses including the expenses here in issue. The share payable to the trust bore the burden of the estate taxes due.

CONCLUSIONS OF LAW

Section 642(h) of the Internal Revenue Code provides that the deductions in excess of gross income of an estate for its final year may be allowed as deductions to "the beneficiaries succeeding to the property of the estate or trust."

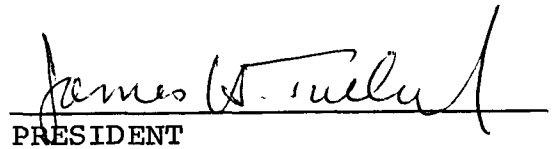
The Treasury regulation pursuant thereto (§1.642(h)-3) provides that the "beneficiaries" referred to are those who bear the economic loss of the item for which the deduction is being granted. It is clear that such qualifying beneficiaries may be different from those who would have benefited from the deductions if the estate had enough income to benefit therefrom. It is also clear that the technical form of a disposition is immaterial to whether a person is a qualifying "beneficiary."

In this case the administration expenses for which the excess deductions are claimed in fact reduces the share to be divided between the widow, petitioner herein, and the trust. Petitioner is a beneficiary of a fraction of the net estate after payment of the expenses here in question and so is a qualifying beneficiary (see Reg. 1.642(h)(3)(c)(1)).

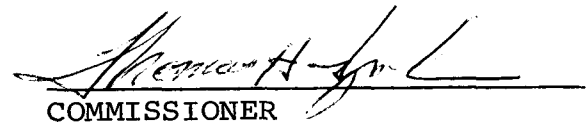
The deficiency in issue is erroneous in its entirety and  
is cancelled.

DATED: Albany, New York  
September 29, 1976

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER