

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

BESS E. BREWER TRUST

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article (x) 22 of the :
Tax Law for the Year(s) ~~or Period(s)~~ :
1971 and 1972.

State of New York
County of Albany

Bruce Batchelor , being duly sworn, deposes and says that
~~he~~ is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 12th day of May , 1977, ~~he~~ served the within
Notice of Decision by (certified) mail upon Bess E. Brewer Trust
c/o R. W. Titus, Jr., Trustee
(~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
Bess E. Brewer Trust
as follows: c/o R. W. Titus, Jr., Trustee
4 Delwood Place
Binghamton, New York 13903
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~~
~~of the~~) petitioner herein and that the address set forth on said wrapper is the
last known address of the (~~representative of~~) petitioner.

Sworn to before me this

12th day of May , 1977.

Bruce Batchelor

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

BESS E. BREWER TRUST

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article (x) 22 of the :
Tax Law for the Year(s) ~~or Period(s)~~ :
1971 and 1972.

State of New York
County of Albany

Bruce Batchelor , 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 12th day of May , 1977, ~~she~~ served the within
Notice of Decision by (certified) mail upon Eugene E. Banick

(representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows:

Eugene E. Banick, CPA
Coopers & Lybrand
84 Court Street
Binghamton, New York 13901

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

12th day of May , 1977.

Bruce Batchelor

Janet [Signature]



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

May 12, 1977

TELEPHONE: (518) **457-1723**

**Bess E. Brewer Trust
c/o R. W. Titus, Jr., Trustee
4 Delwood Place
Binghamton, New York 13903**

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

Please take further notice that pursuant to
Section(8) **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,

Frank J. Puccio
Frank J. Puccio
Supervisor of Small
Claims Hearings

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
BESS E. BREWER TRUST	:	DECISION
for Redetermination of Deficiency or for	:	
Refund of Personal Income Taxes under	:	
Article 22 of the Tax Law for the Years	:	
1971 and 1972.	:	

Petitioner, Bess E. Brewer Trust, c/o R. W. Titus, Jr., Trustee, 4 Delwood Place, Binghamton, New York 13903, filed a petition for redetermination of deficiency or for refund of personal income taxes under Article 22 of the Tax Law for the years 1971 and 1972 (File No. F 551). A small claims hearing was held before Harry Huebsch, Hearing Officer, at the offices of the State Tax Commission, Governmental Civic Center, 44 Hawley Street, Binghamton, New York, on October 20, 1976 at 1:15 P.M. Petitioner appeared by Eugene E. Banick, C.P.A. The Income Tax Bureau appeared by Peter Crotty, Esq., (James Scott, Esq. of counsel).

ISSUE

Was a simple trust entitled to claim a deduction for distributions to beneficiaries which included capital gains that were retained by the trust?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. A simple trust was created by Renna Z. Spaulding on April 18, 1932 for the benefit of petitioner, Bess E. Brewer.

2. The trust indenture did not contain provisions for current distribution of capital gain or corpus.

3. On Federal schedule D, all of the capital gains were allocated to the fiduciary.

4. That the trust did not qualify for the exception allowing the use of capital gains in the determination of distributable net income in accordance with the meaning and intent of section 643(a)(3) of the Internal Revenue Code.

5. That the fiduciary or trustee did not have the power to transfer principal to the beneficiary without court action in accordance with the provisions of section 7-1.6 of the New York State Estates, Powers and Trust Law.

6. That the trust, therefore, was not entitled to claim a deduction for distributions to beneficiaries which included capital gains retained by the entity.


7. That the petition of Bess E. Brewer Trust is denied and the Notice of Deficiency issued January 27, 1975 in the amount of \$2,990.90 is sustained.

DATED: Albany, New York
May 12, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER