

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
THE ESTATE OF SALLY LOEB  
(BERNARD LOEB, EXECUTOR)

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 (x) or (x) 1974.:  
~~(x) or (x)~~

State of New York  
County of Albany

Marsina Donnini, 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 16th day of August, 1977, she served the within Notice of Decision by (certified) mail upon Estate of Sally Loeb, Bernard Loeb, Executor, ~~(representative of)~~ the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:  
The Estate of Sally Loeb  
Bernard Loeb, Executor  
5 Willow Road  
Woodmere, New York 11598  
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

16th day of August, 1977.

Marsina Donnini

Janet Mack

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

THE ESTATE OF SALLY LOEB

(BERNARD LOEB, EXECUTOR)

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 (~~sxxx~~ Period(s)) 1974. :

AFFIDAVIT OF MAILING

State of New York  
County of Albany

Marsina Donnini, 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 16th day of August, 1977, she served the within  
Notice of Decision by (certified) mail upon Daniel P. Sullivan

(representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
Daniel P. Sullivan, Esq.

as follows: Brisach, Sullivan & Sperendi  
1539 Franklin Avenue  
Mineola, New York 11501

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

16th day of August, 1977.

Marsina Donnini

Janet Mack



STATE OF NEW YORK  
STATE TAX COMMISSION  
TAX APPEALS BUREAU  
ALBANY, NEW YORK 12227

**August 16, 1977**

JAMES H. TULLY JR., PRESIDENT  
MILTON KOERNER  
THOMAS H. LYNCH

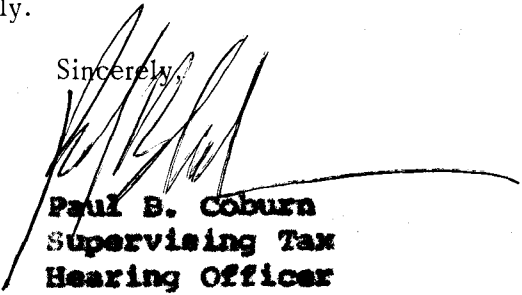
**The Estate of Sally Loeb  
Bernard Loeb, Executor  
5 Willow Road  
Woodmere, New York 11598**

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

You have now exhausted your right of review at the administrative level. Pursuant to section **(S) 690** of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within **4 months** from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,

  
**Paul B. Coburn  
Supervising Tax  
Hearing Officer**

cc: Petitioner's Representative  
  
Taxing Bureau's Representative

## STATE TAX COMMISSION

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 28, 1977, at 10:30 a.m. Petitioner appeared by Daniel P. Sullivan, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Alexander Weiss, Esq., of counsel).

# ISSUE

Whether cash found in the safe deposit box of decedent, Sally Loeb, constituted unreported taxable income for the year 1974.

FINDINGS OF FACT

1. On September 3, 1974, a safe deposit box rented by decedent, Sally Loeb, at the National Bank of North America, 928 Broadway, Woodmere, New York, was opened and \$26,440.00 in cash was found in addition to other valuables.

2. On April 12, 1976, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, the Estate of Sally Loeb (Bernard Loeb, Executor), imposing additional personal income tax for the year 1974 of \$4,102.40, plus \$345.83 in interest, upon the grounds that adjustments were made as the result of a field audit and that, therefore, additional tax was due. Accordingly, a Notice of Deficiency was issued totalling \$4,448.23.

3. Decedent, Sally Loeb, had regularly cashed checks for eleven years prior to and including 1974, from her business account as a psychotherapist, for the purpose of reimbursement of petty cash withdrawals. These checks were cashed at the same bank where the safe deposit box in issue was maintained. These checks totalled over \$53,000.00.

4. The business of decedent, Sally Loeb, was mainly the therapy of children. A "homey" atmosphere was utilized in which the client could bake cookies, play with toys, etc. Cash purchases were made of the paraphernalia needed in this business. Ledger books and petty cash diaries were kept by decedent, accounting for petty cash expenditures and showing the checks received for the reimbursements.

5. The Federal return of decedent, Sally Loeb, for 1974 apparently reported \$60,463.00 as adjusted gross income, and Schedule "C" of the estate tax return for the Estate of Sally Loeb (Bernard Loeb, Executor), dated September 28, 1976, reported over \$80,000.00 in various banks. The approximate size of her gross estate was \$160,000.00.

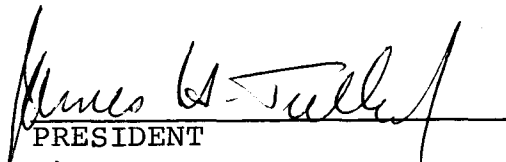
CONCLUSIONS OF LAW

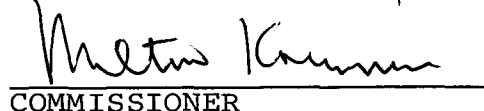
A. That since decedent, Sally Loeb, had regularly cashed checks for petty cash reimbursements at the same bank where the safe deposit box was located, had reported income and assets far in excess of the amount found in the safe deposit box and had her books examined by the Income Tax Bureau, in which no entries were challenged, therefore, no inference is warranted that the money found in the safe deposit box was unreported income for the year 1974, rather than a portion of decedent's assets on which tax had been paid.

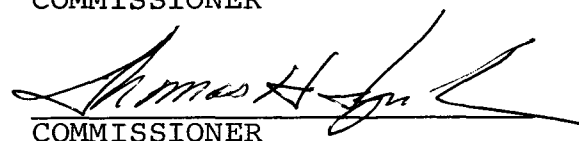
B. That the petition of the Estate of Sally Loeb (Bernard Loeb, Executor) is granted and the Notice of Deficiency issued April 12, 1976 is cancelled.

DATED: Albany, New York  
August 16, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER