

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

THE ESTATE OF A. MARGARET GREEN :

AFFIDAVIT OF MAILING

(WILLIAM M. GREEN, 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 (x) 1968. :


State of New York  
County of Albany

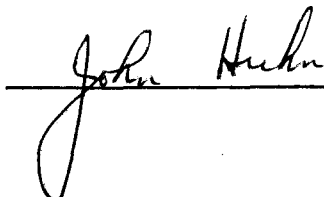
John Huhn , being duly sworn, deposes and says that  
xhe is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 27th day of July , 1978, xhe served the within  
Notice of Decision by (certified) mail upon the Estate of A. Margaret  
Green, c/o William M. Green, 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 A. Margaret Green  
c/o William M. Green, Executor  
61 North Greenwich Road  
Armonk, New York 10504  
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

27th day of July , 1978.





STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition

of  
THE ESTATE OF A. MARGARET GREEN : AFFIDAVIT OF MAILING  
(WILLIAM M. GREEN, EXECUTOR)  
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)~~ 1968. :

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State of New York  
County of Albany

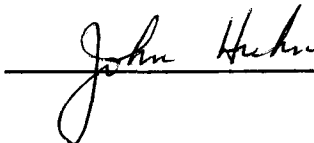
John Huhn , being duly sworn, deposes and says that  
~~she~~ is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 27th day of July , 1978, ~~she~~ served the within  
Notice of Decision by (certified) mail upon Laurie L. Malman  
(representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Ms. Laurie L. Malman  
Sullivan & Cromwell  
48 Wall Street  
New York, New York 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

27th day of July , 1978.

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

July 27, 1978

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

**The Estate of A. Margaret Green  
c/o William M. Green, Executor  
61 North Greenwich Road  
Armonk, New York 10504**

**Dear Mr. Green:**

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 **(x) 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,

**Joseph Chyrywat  
Hearing Examiner**

cc: Petitioner's Representative

Taxing Bureau's Representative

## STATE TAX COMMISSION

On January 6, 1977, petitioner advised the State Tax Commission, in writing, that it desired to waive a small claims hearing and to submit the case to the State Tax Commission upon the entire record contained in the file. After due consideration of said record, the Commission renders the following decision.

## ISSUES

I. Whether a modification for the portion of executors' terminal commissions paid to the executors of a decedent's estate in the final year of the estate (which was allocable to tax-exempt

income for New York State income tax purposes) should be calculated based on the ratio that the New York tax-exempt income bears to total income in the final year of the estate, or whether such allocation should be calculated based on the ratio that said tax-exempt income bears to total income over the life of the estate.

II. Whether any portion of special guardian fees paid in the final year of the estate was allocable to tax-exempt income for New York State income tax purposes and, if so, on which of the bases shown in Issue "I", above, should such tax-exempt income be computed.

III. Whether the Notice of Deficiency was issued prior to the expiration of the period of limitation on assessments in accordance with section 683 of the Tax Law.

#### FINDINGS OF FACT

1. Petitioner, Estate of A. Margaret Green (William M. Green, Executor), reported a \$6,600.00 minus-modification on the decedent's 1968 New York State personal income tax return as a fiduciary adjustment. This adjustment was computed by the fiduciary for the Estate of Edward H. Green, as petitioner's allocable share of the fiduciary adjustment which passed from the Estate of Edward H. Green to the residuary trust under the will of Edward H. Green, and then to the petitioner as co-beneficiary of said residuary trust.

2. On the fiduciary return, executors' commissions, a special guardian's fee and attorney's disbursements totaling \$46,867.40, were claimed as other deductions against total income. Total income was reported in the amount of \$19,966.00, of which \$18,146.34 constituted tax-exempt income for New York State income tax purposes.

3. The attorney's disbursements are not at issue.

4. The Income Tax Bureau contended that the modification for executors' commissions and the special guardian's fee that were both paid in the final year of the estate, was required to be computed in the ratio that tax-exempt income bore to total income in the last year of the estate. It changed the minus \$6,600.00 modification to plus \$14,697.37.

5. Petitioner contended that the executors' commissions constituted payment for services rendered during the life of the estate and, therefore, the modification should have been computed in the ratio that tax-exempt income bore to total income over the life of the estate. Petitioner also contended that the special guardian's fee was an administrative expense, deductible in full. Even if not deductible in full, the fee should have been modified in the ratio that tax-exempt income for New York State income tax purposes bore to total income over the life of the estate.

6. During the six-year life of the estate, the proportion of tax-exempt income was exceptionally low in the first year. However, the proportion progressed to an exceptionally high one in the last year.

7. On December 18, 1967, the New York County Surrogate's Court appointed a guardian ad litem to represent and protect the contingent remainder interest of four minor grandchildren of decedent, Edward H. Green, in the residuary trust created under said decedent's will. The special guardian was paid a fee of \$20,000.00 for his services in 1968, the last year of the estate, which included the verification of the accuracy of the executor's accountings, of the tax returns of market values reported for securities and of the estate's expenditures.

8. The Notice of Deficiency in the amount of \$3,672.78 was issued on February 26, 1973. On January 3, 1972, the petitioner signed a Consent Fixing Period of Limitation upon Assessment of Personal Income Taxes which extended the period of assessment to April 15, 1973.

#### CONCLUSIONS OF LAW

A. That deductions of \$26,182.02 were claimed on the 1968 Federal and New York State fiduciary income tax returns for the Estate of Edward H. Green with respect to executor's commissions paid in said year, and, therefore, a modification for New York State income tax purposes was properly based on the ratio that

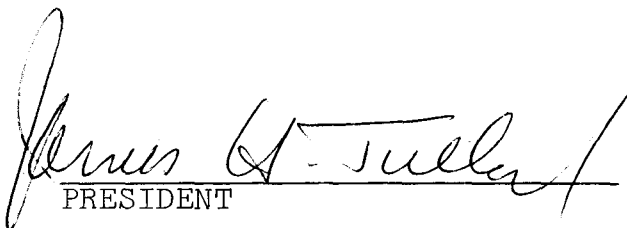
tax-exempt income for New York State income tax purposes bore to the total income in the last year of the estate, in accordance with the meaning and intent of section 612(b)(5) of the Tax Law and 20 NYCRR 116.2(e).

C. That the Notice of Deficiency was issued timely, since it was issued prior to the expiration of the extended period for assessment of tax in accordance with section 683(c)(2) of the Tax Law.

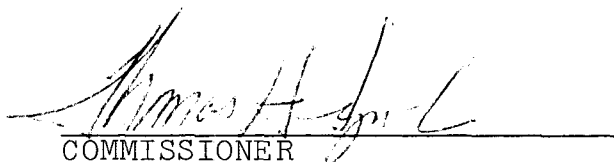
D. That the petition of the Estate of A. Margaret Green (William M. Green, Executor) is denied and the Notice of Deficiency issued February 26, 1973 is sustained, together with such additional interest as may be legally owing.

DATED: Albany, New York  
July 27, 1978

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER