

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

WILLIAM M. GREEN

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)~~ 1968.:

State of New York
County of Albany

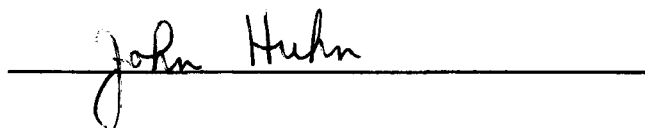
John Huhn , being duly sworn, deposes and says that
~~he~~ is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 27th day of July , 1978, ~~he~~ served the within
Notice of Decision by (certified) mail upon Laurie L. Malman

(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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For a Redetermination of a Deficiency or :
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Taxes under Article (x) 22 of the :
Tax Law for the Year (s) ~~or Period(s)~~ 1968. :

State of New York
County of Albany

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~~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 William M. Green

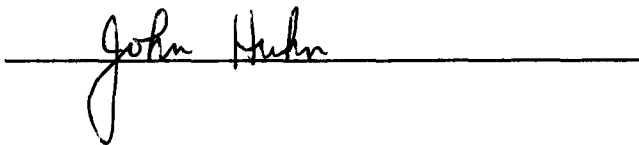
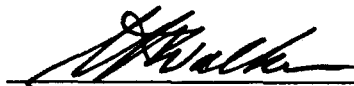
(~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. William M. Green
61 North Greenwich Road
Armonk, New York 10504

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
TAX APPEALS BUREAU
ALBANY, NEW YORK 12227

July 27, 1978

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

Mr. William M. Green
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 ~~(b)~~ **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 Chyrywaty
Hearing Examiner

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
WILLIAM M. GREEN : DECISION
for Redetermination of a Deficiency or :
for Refund of Personal Income Tax under :
Article 22 of the Tax Law for the Year :
1968. :
:

Petitioner, William M. Green, 61 North Greenwich Road, Armonk, New York 10504, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1968 (File No. 13206).

On January 6, 1977, petitioner, William M. Green, advised the State Tax Commission, in writing, that he 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 two bases shown in Issue "I", above, should such tax-exempt income be computed.

III. Whether the Notice of Deficiency was timely issued.

FINDINGS OF FACT

1. Petitioner, William M. Green, reported a \$6,600.00 minus modification on his 1968 New York State personal income tax return, as a fiduciary adjustment which was computed by the fiduciary 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 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 for New York State income tax purposes 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).

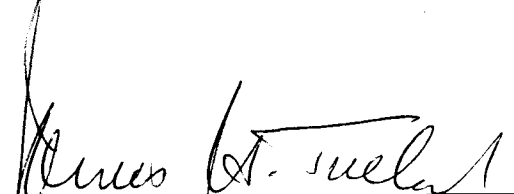
B. That the special guardian fee paid during 1968 and claimed as a deduction for Federal and New York State income tax purposes constituted payment for the conservation or maintenance of property held for the production of income and, therefore, the modification for New York State income tax purposes was properly based on the ratio that tax-exempt income for New York State income tax purposes bore to 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).

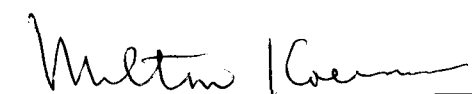
C. That the Notice of Deficiency was issued timely, since it was issued prior to the expiration of the extended period for assessment of tax in accordance with section 683(c)(2) of the Tax Law.

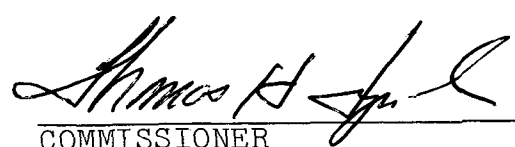
D. That the petition of William M. Green is denied and the Notice of Deficiency issued February 26, 1973 is sustained, together with such additional interest as may be legally owing.

DATED: Albany, New York
July 27, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER