

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
GEORGE and ANNA MARIA MANASSE

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 (XXXXXX) 1971 :

State of New York
County of Albany

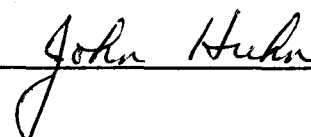
John Huhn , being duly sworn, deposes and says that
Xhe is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 24th day of April , 1978 , Xhe served the within
Notice of Decision by (certified) mail upon George & Anna Maria
Manasse
XXXXXX the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: George & Anna Maria Manasse
15 Wheelock Rd.
Scarsdale, New York 10583
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 XXXXXXXX
XXXXX petitioner herein and that the address set forth on said wrapper is the
last known address of the XXXXXXXXXXXXXXXX petitioner.

Sworn to before me this

24th day of April , 1978.





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

GEORGE and ANNA MARIA MANASSE

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) XXXXX XXXXX (s)~~ 1971 :

State of New York
County of Albany

John Huhn, being duly sworn, deposes and says that

~~X~~he is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 24th day of April, 1978, ~~X~~he served the within

Notice of Decision by (certified) mail upon Seymour G. Saslow, CPA of
Lewis Helphand & Co.
(representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Seymour G. Saslow, CPA of
Lewis Helphand & Co.
342 Madison Avenue
New York, New York 10017

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

24th day of April, 1978







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

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

April 24, 1978

**George & Anna Maria Manasse
15 Wheelock Rd.
Scarsdale, New York 10583**

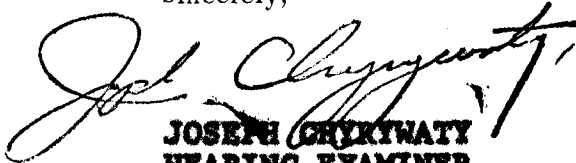
Dear Mr. & Mrs. Manasse:

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) **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 CHYKYWATY
HEARING EXAMINER**

cc: Petitioner's Representative
Taxing Bureau's Representative

STATE TAX COMMISSION

In the Matter of the Petition :
of :
GEORGE and ANNA MARIA MANASSE : DECISION
for Redetermination of a Deficiency or :
for Refund of Personal Income Tax under :
Article 22 of the Tax Law for the Year :
1971. :
:

A small claims hearing was held before Robert F. Mulligan, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on September 2, 1977 at 9:15 A.M. Petitioners appeared by Seymour G. Saslow, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (Aliza Schwadron, Esq., of counsel).

Whether a final accumulation distribution which petitioner Anna Maria Manasse received from a trust during 1971 was includable in her New York adjusted gross income for said year.

1. Petitioner Anna Maria Manasse was the sole beneficiary of an inter vivos trust created by her son, Claus George Manasse, on

April 2, 1960, on which date the last transfer into said trust also took place. The trust was conceded by petitioners to be a "complex" trust.

2. In the final year of the trust (1971) the trustee made a distribution to petitioner Anna Maria Manasse.

3. Petitioners, George and Anna Maria Manasse, filed separate 1971 New York State resident income tax returns on combined form IT-208. The New York adjusted gross income reported on said return by petitioner Anna Maria Manasse did not include the amount of the accumulation distribution which she received from the trust during 1971. However, she attached a schedule to the 1971 New York State return on which she reported "throwbacks" attributable to the 1971 accumulation distribution of \$1,548.91 for 1969 and \$1,597.73 for 1970. On this schedule she recomputed her personal income for the years 1969 and 1970, based on the throwbacks that she reported. She also added the sum of the recomputed tax for said years to the personal income tax computed under the column for "Wife" on the 1971 New York return and subtracted an accumulation distribution credit in the amount of \$72.34 from the personal income tax she computed to be due for 1971.

4. On March 27, 1974, the Income Tax Bureau issued a corrected Statement of Audit Changes against petitioners, on the grounds that \$6,472.98 of the total distribution that Anna Maria Manasse received from the trust in 1971 constituted an accumulation distribution which

was required to be included in her New York adjusted gross income for that year. On this statement, adjustments were also made a) to her recomputed share of the New York fiduciary adjustment from the trust, b) to the amount of accumulation distribution reportable for 1971 and c) to the apportionment of the itemized deduction between the petitioners under the separate columns for husband and wife on the 1971 New York combined form. In accordance with the aforesaid statement, a Notice of Deficiency was issued against petitioners on November 25, 1974 in the sum of \$415.56.

5. Petitioner Anna Maria Manasse submitted an amended Federal Schedule "J" (Allocation of Accumulation Distribution) on which she reported taxable income deemed distributed of \$3,178.09 for 1969 and \$3,294.89 for 1970. The total of these amounts (\$6,472.98) was the sum which was determined by the Income Tax Bureau to be the portion of the amount of the final distribution from the trust which was taxable to the beneficiary in 1971 for New York State income tax purposes.

6. Petitioner Anna Maria Manasse contended that the sum of the amounts included on the amended Federal Schedule "J" (i.e. \$6,472.98) was not included in her Federal gross income for 1971, but was taxed for Federal income tax purposes under section 667 of the Internal Revenue Code by using a special tax computation schedule with respect to the accumulation distribution. She reasoned that since said amount was not included in her 1971 Federal gross income, and

since section 612 of the New York Tax Law contained no provision which would require her to make a modification to add such amount to her Federal income for said year, she was not required to include it in her New York adjusted gross income for 1971.

7. Petitioner Anna Maria Manasse also claimed a refund or credit of \$13.88, but submitted no documentary evidence in support of this claim.

CONCLUSIONS OF LAW

A. That petitioner Anna Maria Manasse received an accumulation distribution of \$6,472.98 in 1971 from a complex trust which was required to be included in her Federal gross income for the year 1971, pursuant to section 662(a)(2) of the Internal Revenue Code and Federal regulation sections 1.665(a)-0A(a)(4), 1.665(b)-2A(b)(4) and 1.668(a)-1A. Therefore, under section 612 of the New York Tax Law which requires Federal conformity, the accumulation distribution of \$6,472.98 was properly includable in the New York adjusted gross income of petitioner Anna Maria Manasse for 1971, notwithstanding the fact that she was permitted to throw back the amount of said accumulation distribution to 1969 and 1970 and to separately compute a Federal tax thereon. There is no provision in the New York Tax Law which permits conformity with respect to special tax computations permitted for Federal income tax purposes. A beneficiary receiving an accumulation distribution is entitled only to the credit set forth in section 621 of the Tax Law.

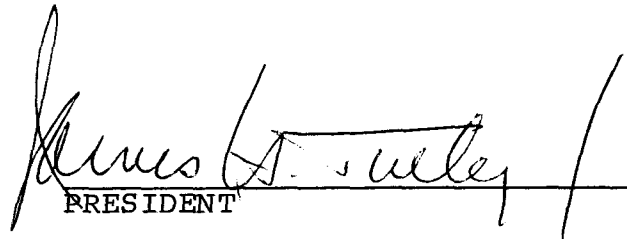
B. That petitioners did not sustain the burden of proof required to show that they were entitled to a refund or credit of \$13.88.

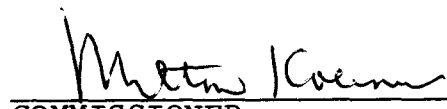
C. That the petition of George and Anna Maria Manasse is denied and the Notice of Deficiency issued November 25, 1974 is sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York

April 24, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER