

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Marie H. Robertson Trust (C.B.) :  
Charles S. Robertson, Trustee : AFFIDAVIT OF MAILING  
for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of :  
Personal Income Tax :  
under Article 22 of the Tax Law :  
for the Period 1/31/73. :

State of New York  
County of Albany

Jay Vredenburg, 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 14th day of March, 1980, he served the within notice of Decision by certified mail upon Marie H. Robertson Trust (C.B.), Charles S. Robertson, Trustee, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Marie H. Robertson Trust (C.B.)  
Charles S. Robertson, Trustee  
100 Wall St. Room 1500  
New York, NY 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 petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this  
14th day of March, 1980.

Joanne Krapp

J. Vredenburg

STATE OF NEW YORK  
STATE TAX COMMISSION

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Sirs  
Curtis, Mallet-Prevost, Colt & Mosle  
100 Wall St.  
New York, NY 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  
14th day of March, 1980.

Jeanne Knapp

J. Vredenburg

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

March 14, 1980

Marie H. Robertson Trust (C.B.)  
Charles S. Robertson, Trustee  
100 Wall St. Room 1500  
New York, NY 10005

Dear Mr. Robertson:

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:

NYS Dept. Taxation and Finance  
Deputy Commissioner and Counsel  
Albany, New York 12227  
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Curtis, Mallet-Prevost, Colt & Mosle  
100 Wall St.  
New York, NY 10005  
Taxing Bureau's Representative

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of  
Marie H. Robertson Trust (U.S.T.R.) :  
Charles S. Robertson, Trustee : AFFIDAVIT OF MAILING  
for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of  
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Charles S. Robertson, Trustee  
100 Wall St. Room 1500  
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Joanne Knapp

[Signature]

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STATE TAX COMMISSION

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of :  
Marie H. Robertson Trust (U.S.T.R.) :  
Charles S. Robertson, Trustee : AFFIDAVIT OF MAILING  
for Redetermination of a Deficiency or a Revision :  
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ALBANY, NEW YORK 12227

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Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Curtis, Mallet-Prevost, Colt & Mosle  
100 Wall St.  
New York, NY 10005  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petitions	:	
of	:	
MARIE H. ROBERTSON TRUST (C.B.)	:	DECISION
CHARLES S. ROBERTSON, TRUSTEE	:	
and	:	
MARIE H. ROBERTSON TRUST (U.S. TR.)	:	
CHARLES S. ROBERTSON, TRUSTEE	:	
for Redetermination of Deficiencies or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Fiscal	:	
Year Ending January 31, 1973.	:	

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Petitioners, Marie H. Robertson Trust (C.B.), Charles S. Robertson, Trustee, and Marie H. Robertson Trust (U.S. Tr.), Charles S. Robertson, Trustee, 100 Wall Street, Room 1500, New York, New York 10005, filed petitions for redetermination of deficiencies or for refund of personal income tax under Article 22 of the Tax Law for the fiscal year ending January 31, 1973 (File Nos. 19537 and 19538).

On December 7, 1978, a formal hearing was waived by petitioners' representative and both petitions were submitted to be decided on the record contained in the existing files.

ISSUES

I. Whether section 618 of the Tax Law, as amended on June 11, 1973, can constitutionally be applied retroactively to all tax years beginning on or after January 1, 1972.

II. Whether the fifty percent capital gains deduction allowed under section 1202 of the Internal Revenue Code is an item of tax preference for determining the minimum tax liability under section 56 of the Internal Revenue Code for a trust that pays a portion of its capital gains to a charitable organization.

FINDINGS OF FACT

1. On November 1, 1974, the Income Tax Bureau issued to Marie H. Robertson Trust ("C.B."), Charles S. Robertson, Trustee, a Statement of Audit Changes imposing additional tax due for the short period April 19, 1972 to January 31, 1973. The statement explained that tax was due as a result of the improper application of section 618 of the Tax Law and the minimum tax provisions of the Tax Law. On October 1, 1975, the Income Tax Bureau revised the above with another Statement of Audit Changes correcting mathematical errors made in the November 1, 1974 statement. In conformity with the revised Statement of Audit Changes, the Audit Division, on April 11, 1977, issued a Notice of Deficiency to Marie H. Robertson Trust ("C.B."), Charles S. Robertson, Trustee, asserting personal income tax for the year ending January 31, 1973 of \$8,566.63, plus interest of \$2,508.65, for a total of \$11,075.28.

2. On November 1, 1974, the Income Tax Bureau issued another Statement of Audit Changes to Marie H. Robertson Trust ("U.S. Tr."), Charles S. Robertson, Trustee, imposing additional tax due for the short period April 19, 1972 to January 31, 1973. The statement explained that tax was due as a result of the improper application of section 618 of the Tax Law and the minimum tax provisions of the Tax Law. On October 1, 1975, the Income Tax Bureau revised the November 1, 1974 statement to reflect the proper amount of interest due. In conformity with the revised Statement of Audit Changes, the Audit Division, on April 11, 1977, issued a Notice of Deficiency to Marie H. Robertson Trust ("U.S. Tr."), Charles S. Robertson, Trustee, asserting personal income tax for the year ending January 31, 1973 of \$7,421.78, plus interest of \$2,173.39, for a total of \$9,595.17.



3. The herein involved trusts were created by Marie H. Robertson on December 3, 1969. They were both revocable inter vivos trusts that she funded with a substantial amount of cash and securities. She created two similar trusts in order to have two separate financial institutions manage her assets. The managers were Chemical Bank ("C.B.") and United States Trust Company of New York ("U.S. Tr.").

4. On April 19, 1972, Marie H. Robertson died without revoking the trusts, and as a result, the trusts became irrevocable.

5. For the tax year ending January 31, 1973, both trusts realized taxable net long-term capital gains and deducted, in arriving at Federal taxable income, one-half of the amount by which net long-term capital gains exceeded net short-term capital losses for the taxable year. Petitioners, in arriving at the amount of capital gains for Federal and New York State minimum income tax purposes, subtracted seventy-five percent of fifty percent of said gains in arriving at items of tax preference. Petitioners contended that seventy-five percent of the capital gains were paid to the Banbury Fund, Inc. ("Banbury"), a charitable organization of the type described in section 170(c) of the Internal Revenue Code, and therefore, the capital gain modification should be based on the amount of long-term capital gains at fifty percent less the amount paid to Banbury.

6. On June 11, 1973, section 618 of the Tax Law was amended to provide that the New York taxable income of a resident trust should include the modification described in section 612(b)(11) of the Tax Law. This modification requires that a taxpayer who has deducted one-half of the amount by which net long-term capital gains exceed net short-term capital losses for the taxable year must add back one-fifth of the amount so deducted. This amendment was to

be applied to all tax years beginning on or after January 1, 1972. Each trust, in computing its New York taxable income for the fiscal year ending January 31, 1973, did add back one-fifth of the capital gain deduction to Federal taxable income of the fiduciary.

7. Petitioners do not contest the allocation found in the statements of audit changes, including the allocation of the specific deduction allowed a resident trust in computing minimum tax.

#### CONCLUSIONS OF LAW

A. That petitioners Marie H. Robertson Trust ("U.S. Tr."), and Marie H. Robertson Trust ("C.B.") were not required to add 20 percent of the long-term capital gain deduction claimed for the fiscal year ending January 31, 1973 to Federal taxable income of the trust in computing the trust's New York taxable income; that the 1973 Amendment (Ch. 718, Laws 1973) to section 618 of the Tax Law is ineffective insofar as its retroactive application to petitioner's returns for the fiscal year ending January 31, 1973 and that said application has been held unconstitutional in that regard (Holly S. Clarendon Trust v. State Tax Commission, 43 N.Y.2d 933).

B. That for minimum income tax purposes petitioners are allowed to deduct, from fifty percent of the long-term capital gains, the amount of said gains paid to a charitable organization (Revenue Ruling 73-43). Therefore, fifty percent of the amount paid to the Banbury Fund, Inc., must be deducted in computing total items of tax preference.

C. That the petitions of Marie H. Robertson Trust ("C.B."), Charles S. Robertson, Trustee, and Marie H. Robertson Trust ("U.S. Tr."), Charles S. Robertson, Trustee, are granted to the extent that no modification was required to add 20 percent of the long-term capital gain deduction to Federal taxable income in arriving at the New York taxable income of the trusts (as explained in Conclusion of Law "A", supra); that the Audit Division is hereby directed to recompute minimum taxable income to the extent of adjusting the amount of personal income tax of the fiduciary; that petitioners are entitled to a credit or refund of taxes paid as a result of erroneously including the capital gain modification above; and that, except as so granted, the petitions are in all other respects denied.

DATED: Albany, New York

MAR 14 1980

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER