

(Revised determination
submitted for signature
8/2/65)

Zock, J. A., & Co.

**STATE OF NEW YORK
STATE TAX COMMISSION**

**IN THE MATTER OF THE APPLICATION OF
J. A. ZOCK & CO.
TO REVIEW A DETERMINATION ASSESSING A
STOCK TRANSFER TAX PURSUANT TO ARTICLE 12
OF THE TAX LAW**

J. A. Zock & Co. having filed an application for a hearing to review a determination assessing a stock transfer tax in the amount of \$364.92 pursuant to Article 12 of the Tax Law (determination No. 108 dated October 10, 1960), and a hearing having been held in connection therewith at the office of the State Tax Commission, 80 Centre Street, New York, New York, on August 3, 1961 before Thomas F. McGrath, Esq., Hearing Officer, at which hearing the taxpayer appeared by one of the partners, Joseph A. Zock, who testified personally, and the record having been duly examined and considered,

The State Tax Commission hereby finds,

(1) That at all times hereinafter mentioned, the taxpayer was a partnership engaged in business as a firm dealing in securities with offices at 20 Exchange Place, New York, New York.

(2) That the partnership was formed on June 1, 1959 pursuant to a partnership agreement entered into between Joseph A. Zock and Sarah M. Zock, his wife; that the partnership agreement provided that each of the partners was to contribute as capital of the partnership certain securities owned by each

of the individuals; that said securities consisted of 15,296 shares of stock owned by Joseph A. Lock and 2,998 shares of stock owned by Sarah M. Lock upon which the stock transfer tax was assessed; that assessments were issued against the partnership based upon a transfer of such shares of stock.

(3) That the partnership agreement further provided that:

"Any increase or diminution in value of the securities contributed by any of the partners hereto shall be credited or debited to said partners account, as the case may be, and any income derived from said securities shall accrue to the partners contributing the same."

(4) That pursuant to the directions of each of the individual partners, the shares were transferred from the account of the individuals to the partnership account; that the individual partners further directed that the dividends received on the stock should be remitted to the individuals; that the stocks were transferred in order that the partnership should have assets or a reserve sufficient to provide security for partnership creditors pursuant to the rules of the New York Stock Exchange.

Upon the foregoing findings and all of the evidence presented herein, it is hereby

DECIDED:

That although, pursuant to the articles of copartnership, the income, gain and loss attributable to the shares of stock transferred by the individual partners to the copartnership were accruable not to the copartnership but to the individual partners, the transferred shares of stock were principal assets of the partnership to which partnership creditors present or future could

resort for satisfaction of their claims against the partnership; the partners' transfers of such shares of stock were taxable in accordance with the intent and meaning of Section 270 of the Tax Law; that the determination (determination No. 100 dated October 10, 1960) imposing a stock transfer tax of \$364.92 upon such transfer is correct and was lawfully and properly issued and the assessment is hereby affirmed.

DATED: Albany, New York this 19th day of August , 1965.

STATE TAX COMMISSION

/s/

JOSEPH H. MURPHY
President

/s/

IRA J. PALESTIN
Commissioner

/s/

JAMES R. MACDUFF
Commissioner

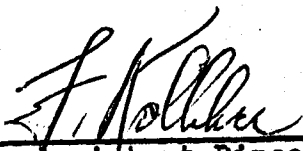
BUREAU OF LAW

MEMORANDUM

TO: Commissioner Palestin
FROM: Mr. Kelliher
SUBJECT: J. A. Zock & Company

In accordance with your memorandum of July 19, the determination in this case has been redrafted to incorporate the language you set forth in that memorandum.

I return herewith this revised form of determination, together with the file and the original determination signed by Commissioner Macduff.


Assistant Director

August 2, 1965
FK:EB

Enc.

MEMORANDUM

TO: Mr. Kelliher
FROM: Commissioner Palestin
SUBJECT: J. A. Zock & Company

RECEIVED
DEPT. OF REVENUE
JUL 20 1965
LAW BUREAU

I agree that this "Shearson Hammill" type of stock transfer from the individual to the co-partnership for net work purposes of the latter is taxable under Article 12. But I would use different language in the first paragraph of the determination portion. Rather than say "Although the partnership had no control over the income of the shares of stock transferred to its account" which is an adjectival conclusion, I would substitute:

"Although, pursuant to the articles of co-partnership, the income, gain and loss attributable to the shares of stock transferred by the individual partners to the co-partnership were accruable not to the co-partnership but to the individual partners, the transferred shares of stock were principal assets of the partnership to which partnership creditors present or future could resort for satisfaction of their claims against the partnership; the partners' transfers of such shares of stock were taxable in accordance with the intent and meaning of Section 270 of the Tax Law;"

Please have the determination redrawn and resubmitted.



IRA J. PALESTIN

July 19, 1965

cc: Commissioner Macduff

BUREAU OF LAW

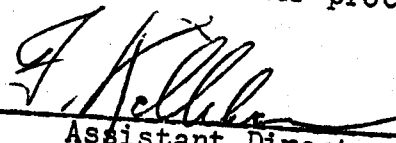
MEMORANDUM

TO: Commissioners Murphy, Palestin and Macduff
FROM: Mr. Kelliher
SUBJECT: J. A. ZOCK & COMPANY

The issue raised herein is whether a stock transfer tax was properly imposed upon transfers of shares of stock from the accounts of the individual partners to a partnership account to provide security for partnership creditors pursuant to the rules of the New York Stock Exchange where the dividend income from such stock was reserved to the individual partners.

The facts herein are similar to those set forth in Matter of Shearson Hammill & Co. v. State Tax Commission of the State of New York, 15 NY 2d 608, affirmed without opinion, 19 AD 2d 245. However, the matter before us concerns the imposition of stock transfer taxes and not that of taxes on income. I am of the opinion that since the principal of such shares of stock was transferred in order that the partnership should have assets reserved sufficient to provide security for the partnership creditors pursuant to the rules of the New York Stock Exchange, such transfer of principal was a taxable transfer in accordance with the intent and meaning of Section 270 of the Tax Law. Accordingly, a proposed decision affirming the determination has been prepared.

If you agree, kindly sign the same and return to the Law Bureau together with the entire file for further processing.


Assistant Director

MS:ca
Enclosure

July 15, 1965

STATE OF NEW YORK

STATE TAX COMMISSION

IN THE MATTER OF THE APPLICATION OF

J. A. ZOCK & CO.

**TO REVIEW A DETERMINATION ASSESSING A
STOCK TRANSFER TAX PURSUANT TO ARTICLE 12
OF THE TAX LAW**

J. A. Zock & Co. having filed an application for a hearing to review a determination assessing a stock transfer tax in the amount of \$104.92 pursuant to Article 12 of the Tax Law (determination No. 188 dated October 18, 1960), and a hearing having been held in connection therewith at the office of the State Tax Commission, 80 Centre Street, New York, New York, on August 3, 1961 before Thomas F. McCreath, Esq., Hearing Officer, at which hearing the taxpayer appeared by one of the partners, Joseph A. Zock, who testified personally, and the record having been duly examined and considered,

The State Tax Commission hereby finds,

(1) That at all times hereinafter mentioned, the taxpayer was a partnership engaged in business as a firm dealing in securities with offices at 28 Exchange Place, New York, New York.

(2) That the partnership was formed on June 1, 1959 pursuant to a partnership agreement entered into between Joseph A. Zock and Sarah M. Zock, his wife; that the partnership agreement provided that each of the partners was to contribute as capital of the partnership certain securities owned by each

Administrative (1911-1912)
Administrative (1913-1914)
(1915-1916)

of the individuals; that said securities consisted of 18,298 shares of stock owned by Joseph A. Zeck and 1,858 shares of stock owned by Sarah M. Zeck upon which the stock transfer tax was assessed; that assessments were issued against the partnership based upon a transfer of such shares of stock.

(3) That the partnership agreement further provided that:

"Any increase or diminution in value of the securities contributed by any of the partners hereto shall be credited or debited to said partners account, as the case may be, and any income derived from said securities shall accrue to the partners contributing the same."

(4) That pursuant to the directions of each of the individual partners, the shares were transferred from the account of the individuals to the partnership account; that the individual partners further directed that the dividends received on the stock should be remitted to the individuals; that the stocks were transferred in order that the partnership should have assets or a reserve sufficient to provide security for partnership creditors pursuant to the rules of the New York Stock Exchange.

Upon the foregoing findings and all of the evidence presented herein, it is hereby

DECIDED:

That although the partnership had no control over the income of the shares of stock transferred to its account by the individual partners, the shares of stock were assets of the partnership as to principal to which partnership creditors present or future could resort for satisfaction of their claims against the partnership; that such transfers were taxable transfers in accordance with the intent and meaning of section 170

of the Tax Law; that the determination (determination No. 188 dated October 18, 1960) imposing a stock transfer tax of \$284.82 upon such transfer is correct and was lawfully and properly issued and the assessment is hereby affirmed.

DATED: Albany, New York this day of , 196 .

STATE TAX COMMISSION

President

Commissioner

Commissioner