art. 12

In the Matter of the KKENEXXX Application

L. H. ROTHCHILD & CO.
TO SET ASIDE CERTAIN STOCK TRANSFER
TAXES ASSESSED PURSUANT TO ARTICLE 12
OF THE TAX LAW
FORKERSENSENTERSENSENT AND BESTER SERVICES
AND RESERVOIRES
AND

AFFIDAVIT OF MAILING OF NOTICE OF DECISION BY (CERTIFIED) MAIL

State of New York County of Albany

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Rae Zimmerman , 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 23rd day of December , 1971, she served the within Notice of Decision (or Determination) by (certified) mail upon Charles Kieffer, Esq. (representative of) the petitioner in the within

proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows:

Charles Kieffer, Esq. Kieffer & Moroney, Esqs. 1875 Connecticut Avenue

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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative of) 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

23rd day of December , 19 71

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Sworn to before me this

23rd day of December 1971

) Hala (a (a) STATE OF NEW YORK
STATE TAX COMMISSION

IN THE MATTER OF THE APPLICATION

OF

L. H. ROTHCHILD & CO.

DETERMINATION

TO SET ASIDE CERTAIN STOCK TRANSFER TAXES ASSESSED PURSUANT TO ARTICLE 12 OF THE TAX LAW

L. H. Rothchild & Co., the taxpayer herein, having filed an application to set aside certain stock transfer taxes assessed pursuant to Article 12 of the Tax Law for the period from November 7, 1960 to December 20, 1963 inclusive 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 November 4, 1964 and December 2, 1964 before Vincent P. Molineaux, Hearing Officer of the Department of Taxation and Finance, at which hearing Lewis Howard Rothchild and Charles W. Stevens, partners of taxpayer and Kieffer & Meroney, Esqs., Attorneys at Law, Charles Kieffer, Esq. of Counsel appeared for the taxpayer and Louis Morgenbesser, Supervising Tax Examiner appeared for the State Tax Commission and the matter having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That the taxpayer, L. H. Rothchild & Co. is a securities brokerage firm having its principal place of business at 52 Wall Street, New York, New York, and in the course of its business and during the period from November 7, 1960 to December 20, 1963 maintained and operated a teletype machine for the transaction of its business.

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DETERMINATION

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(1) Find the tamperer, h. H. Nothenlin e 10. is a securities erotter three three having its principal phase of brainers as 58 Wall trreet, New York, New York, and in the course of its business and during the perhod grow November 7, 1960 to December 80, 1965 mintained and operated a teletype machine for the trans-

- (2) That for the period in question the State Tax Commission made a determination of tax liability in the amount of \$1,339.65 based upon stock transfers evidenced by teletype messages. Included in the tax liability is a percentage amount of \$142.88 representing an assessment for a four month period for which the records of the taxpayer are missing.
- teletype sales between a New York and an out-of-state broker, that where no other taxable event occurs in New York, (a) the taxability of a particular trade will depend generally on the situs of the acceptance of the bid to buy or offer to sell; (b) a legally enforceable contract results when an unconditional acceptance, and intended as such, has been made to a definite offer and communicated to the person making the offer; (c) if the bid to buy or offer to sell is accepted by the out-of-state broker and no other taxable event occurs in New York, no tax is payable; (d) if the bid to buy or offer to sell is accepted in New York, then a tax is payable; and (e) each transaction must be examined to determine whether or not a tax is payable.
- (4) That the taxpayer's contention that it is a pure wholesale dealer and that its quotations as they appear in the National Daily Quotations Services (Pink Sheets) constitute much more than the quotations of a majority of dealers who are not pure wholesale dealers, firm bids to buy and firm offers to sell in the generally recognized trading unit of the stock of the particular company being quoted is rejected.
- (5) That the quotation of a price by the taxpayer even when made in response to an inquiry, is not treated as an offer, but merely as an invitation to the person to whom the quatation is sent to make an offer on those terms.

- (2) That for the period in question the State Tax Commission ande a determination of tax limitaty in the amount of \$1,550. So based upon stock stansfers cyldeneed by teletype messages. It shade to the text liability to a percentage abount of \$142.68 representing an acsessaget for a four month period for which the records of the taxpeyer are missing.
- (3) That the tenter cancedes with reference to colorate calculation rates between a New York and an out-of-atate broker, that where no other taxible event cours in New York, (a) one tentability of a particular trade will depend penerally on the situs of the socieptence of the odd to buy or offer to sail; (a) a legally enforceable contract results when an unconditional acceptance, and intended as such, has been made to a definite offer and covernicated to the person mainty the offer; (c) if the odd to buy or other to calculate broker to be a definite offer to buy or other to add the sent occurs the offer, no tax is payable; (d) if the old (d) if the old (e) if the old (e) if the old (d) if the old of our offer to buy or offer to sail is accepted in new York, then old to buy or offer to sail is accepted in new York, then old to buy or not a sail is accepted in her York, to determine knether or not a sail is accepted in her York, to determine knether or not a sail is accepted in her York,
- (i) That the temperts contention that it is a pure wholeral design the tare design and teat the first office as they appear in the Matianal Daily Quotations services (Fink Skeets) constitute much more than the quotations of a coloraty of declars who are not pure wholesale dealers, then olds to buy and them offers to sell in the generally recognized trading unit of the stock of the speck of the speck.

 particular company being quoted is rejected.
 - (1) That the quotation of a price by the tamperer even made in response to an inquiry. Is not treated an on of law, but merely as on invitabilan to the person to rank the first on three to make to make an offer on three terms.

- (6) That the quotations of the taxpayer as they appear in the National Daily Quotation Service (Pink Sheets) do not constitute firm bids to buy and firm offers to sell.
- (7) That the taxpayer made a case by case analysis and as an example of their position selected the trade of February 23, 1961 involving Wayne Hummer & Co. The taxpayer took the position that Wayne Hummer & Co. accepted the offer that was in the pink sheets. In that transaction the following teletype messages were received and sent by the taxpayer:
 - "OB What's Southern Oxygen please?
 - LH 15 1/2 16 1/2
 - OB Can pay 16 for 100. Wait a second please my man just calling. Can pay 1/2 100.
 - LH Of course, we STU 100 Southern Oxygen at 16 1/2
 - OB Thanks; we buy from you as above"
- (8) That no enforceable contract has been made until the number of shares has been specified by the taxpayer and that the specification of the number of shares involved in the transaction constitutes an offer; that an enforceable contract has been made when that offer has been accepted. Therefore, the situs of the acceptance in the Wayne Hummer & Co. trade was in New York when the taxpayer answered by saying, "Of course we sell to you 100 Southern Oxygen at 16 1/2."
- (9) That an analysis of each and every transaction in question discloses that the situs of the acceptance of the offer to buy or sell was in New York.
- (10) That the tax assessed on the transaction of June 7, 1961, Pacific N. W. 500 Boise 22 7/8 has been paid and the assessment should be reduced by the amount of \$20.00.

- (c) That the guosebions of the tampaper as they appear in the Mational Dally subtation Service (Lina Sheets)
 do not constitute firm bids to buy and firm offers to sell.
- (7) That the tampayer made a case by case encloses and at an example of their position selected the trade of February (5, 1901 involving majue Humber & Oo. The taxongrer took one position that Mayne Humber & Oo. accepted the order that was in the plink sheets. In that transaction the following teletroe measaction the felctroe measaction the felctroe measaction the felctroe measaction the teletroe.

"D3 - White of southern Oxygen please?

0/I 0I - 8/I 8I - Ed

OB - Con pay le for 100. Wait o sedond plesse by man just delling. Can pay 1/2 100.

ER - Of course, we STU 106 Southern Oxygen at 10 1/2

03 - Thanks; we buy from you ac above

- (2) That no enforceable contract has been hade until the number of chares has been specified by the tampeyor and that the aposition of the number of shares involved in the transaction constitutes an offer; that an enforceable contract has been made when that offer has been accepted. Therefore, the situs of the coopeases in the way is involved by the coopeases in the way is involved by asying. "Of course we sell new York when the tampeyer answered by asying, "Of course we sell to you looked our contract at 10 1/2."
 - (%) That an analysis of each and every bransaction in question discloses that the situs of the acceptance of the offer to buy or sell was in New York.
 - (10) That the tax ensessed on the transaction of June 7, 1961, Pactaid W. W. 500 Boile 28 7/6 has been paid and tas ensestates the about of 22.00.

(11) That the tax assessed on the transaction of February 19, 1962 E. F. Hutton 100 Eon 7 5/8 has been paid and the assessment should be reduced by the amount of \$2.00.

Based upon the foregoing findings and all of the evidence presented herein, the State Tax Commission hereby DETERMINES:

- (A) That the teletype transactions of the taxpayer for the period November 7, 1960 to December 20, 1963 inclusive were taxable pursuant to Article 12 of the Tax Law and that the tax as assessed was authorized and correct, except for the transactions of June 7, 1961 and February 19, 1962.
- (B) That the assessment of stock transfer tax in the amount of \$1,339.65 is hereby reduced by the sum of \$22.00.
- (C) That the application to set aside the stock transfer taxes assessed pursuant to Article 12 of the Tax Law is hereby denied, except as above stated,

And it is so ordered.

DATED: Albany, New York this

day of

, 19

December 23, 1971

STATE TAX COMMISSION

PRESIDENT

COMMISSIONER

COMMISSIONER

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