

STATE OF NEW YORK
STATE TAX COMMISSION

Oct. 12

In the Matter of the ~~RETURN~~ Application

of
L. H. ROTHCHILD & CO.
TO SET ASIDE CERTAIN STOCK TRANSFER
TAXES ASSESSED PURSUANT TO ARTICLE 12
OF THE TAX LAW
~~For a Determination of a Refund of~~
~~Taxes under Article (12) of the~~
~~Tax Law for the Year(s)~~

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

State of New York
County of Albany

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
Washington, D.C.

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, 1971

Martha Furass

Rae Zimmerman

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the ~~XXXXXX~~ Application

L. H. ROTHCHILD & CO.
TO SET ASIDE CERTAIN STOCK TRANSFER
TAXES ASSESSED PURSUANT TO ARTICLE 12
OF THE TAX LAW,
~~FOR A DETERMINATION OF A DEFICIENCY OF~~
~~A RETURN OF~~
~~TAXES UNDER ARTICLE(S) OF THE~~
~~TAX LAW FOR THE YEAR(S)~~

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State of New York
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Rae Zimmerman

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Sworn to before me this

23rd day of **December**, 19**71**.

Martha L. Lunn

Rae Zimmerman

STATE OF NEW YORK
STATE TAX COMMISSION

IN THE MATTER OF THE APPLICATION

OF

L. H. ROTHCHILD & CO.

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

DETERMINATION

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 & Maroney, 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.

STATE OF NEW YORK
REVENUE TAX COMMISSION

IN THE MATTER OF THE ESTATE OF

OF

L. H. ROSENBERG & CO.

DETERMINATION

TO DETERMINE CERTAIN TAXES AND TO
TAXES ASSESSED PURSUANT TO SECTION
11 OF THE TAX LAW

L. H. Rosenberg & Co., the taxpayer herein, having
filed an application to set aside certain taxes previously assessed
pursuant to Article 11 of the Tax Law for the period
from November 1, 1933 to December 31, 1934 inclusive and a
hearing having been held in connection therewith at the office
of the State Tax Commission, 60 Centre Street, New York, New York
on November 4, 1935 and December 2, 1935 before Vincent P.
Hollmann, Hearing Officer of the Department of Taxation and
Finance, at which hearing Lewis Howard Rosenfeld and Charles A.
Stevens, partners of taxpayer and Miller & Monahan, Attorneys
at Law, Charles Miller, Esq. of Counsel appeared for
the taxpayer and Louis Wapner, Esq. of Counsel for the State Tax Commission,
the taxpayer and Louis Wapner, Esq. of Counsel for the State Tax Commission
appeared for the State Tax Commission and the hearing having been
fully examined and considered.

The State Tax Commission hereby finds:

- (1) That the taxpayer, L. H. Rosenberg & Co. is a
corporation organized under the laws of the State of New York
as its principal place of business
as its principal place of business, New York, New York, and in the course of its
business and during the period from November 1, 1933 to December 31,
1934 maintained and operated a telephone machine for the trans-
mission of its business.

(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.

(3) That the taxpayer concedes with reference to 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 quotation is sent to make an offer on those terms.

(2) That for the period in question the State Tax Commission made a determination of tax liability in the amount of \$1,000.00 based upon stock transfers evidenced by teletype messages. Included in the tax liability is a percentage amount of \$100.00 representing an assessment for a four month period for which the records of the taxpayer are missing.

(3) That the taxpayer contended with reference to 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 status 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 the quotations as they appear in the National Daily Quotations Service (Pink Sheet) constitute more than the quotations of a minority of dealers who are not pure wholesale dealers, that bids to buy and 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 quotation is sent to make an offer on those 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.

(6) That the question of the taxpayer as they appear in the National Bulletin of the National Board of Taxpayers (the sheets) do not constitute this side to buy and then others to sell.

(7) That the taxpayer made a case by case analysis

and as an example of their position selected the trade of February 22, 1961 involving Wayne Hunter & Co. The taxpayer took the position that Wayne Hunter & Co. accepted the offer that was in the pink sheets. In that transaction the following telephone messages were received and sent by the taxpayer:

"03 - What's Southern Order please?"
"04 - 12 1/2 - 12 1/2"
"05 - Can pay 10 for 100. Wait a sec-
and please my man just calling.
Can pay 12 1/2 100."
"06 - Of course, we pay 100 Southern
Order at 12 1/2"
"07 - Thanks; we pay 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 state of the taxpayer in the Wayne Hunter & Co. trade was in New York when the taxpayer answered by saying, "Of course we sell to you 100 Southern Order at 12 1/2."

(9) That an analysis of each and every transaction in question discloses that the state of the taxpayer at the time of the offer to buy or sell was in New York.

(10) That the tax assessed on the transaction of June 7, 1961, relating to W. 500 Borne & Co. has been paid and the assessments should be reduced by the amount of \$24.00.

(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.

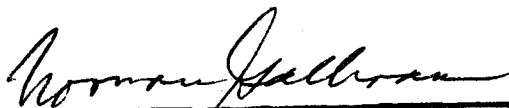
(C) That the application to set aside the stock transfer taxes assessed pursuant to Article 12 of the Tax Law is hereby denied, except as above stated,

And it is so ordered.

DATED: Albany, New York this day of , 19

December 23, 1971

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

(11) That the tax assessed on the transaction of February 1, 1963 E. P. Hinson 100 Bar 7 has been paid and

the assessment should be reduced by the amount of \$1.00.
Based upon the foregoing findings and all of the evidence presented herein, the State Tax Commission hereby

ORDERED:

(A) That the relative circumstances of the taxpayer for the period November 1, 1962 to December 31, 1962 inclusive were taken into account to Article 13 of the Tax Law and that the tax as assessed was correct and correct, except for the fraction of one cent of one dollar and seventy-five cents.

(B) That the assessment of State Income Tax in the amount of \$1,000.00 is hereby reduced by the sum of \$1.00.

(C) That the application to set aside the State Income Tax taken assessed pursuant to Article 13 of the Tax Law is hereby denied, except as above stated.

And it is so ordered.

DATE: April 1, 1963 DAY OF April

ATTEST THE COMMISSIONER

F. L. HINSON

COMMISSIONER

COMMISSIONER