

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

COLIN HOCHSTIN CO.

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Stock Transfer :
Taxes under Article ~~XX~~ 12 of the :
Tax Law for the Year ~~(s) or Period(s)~~ 1971.:

State of New York
County of Albany

Catherine Steele, 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 20th day of August, 1976, she served the within
Notice of Decision by ~~(certified)~~ mail upon Colin Hochstin Co.

~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Colin Hochstin Co.
120 Broadway
New York, New York 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)~~
~~xxx~~ 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

20th day of August, 1976

Catherine Steele

Janet Mark



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

TAX APPEALS BUREAU

STATE CAMPUS
ALBANY, N.Y. 12227

STATE TAX COMMISSION

ADDRESS YOUR REPLY TO

August 20, 1976

TELEPHONE: (518) **457-3850**

Colin Hochstin Co.
120 Broadway
New York, New York 10005

Gentlemen:

Please take notice of the **DECISION**
of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to
Section(s) **279(a)** of the Tax Law, any
proceeding in court to review an adverse deci-
sion must be commenced within **90 days**
from the date of this notice.

Inquiries concerning the computation of tax
due or refund allowed in accordance with this
decision or concerning any other matter relative
hereto may be addressed to the undersigned. They
will be referred to the proper party for reply.

Very truly yours,

Paul E. Coburn
Supervising Tax
Hearing Officer

Enc.

XXXXXXXXXXXXXXXXXXXXXXXXXXXX
cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application

of

COLIN HOCHSTIN CO.

DECISION

for a Hearing to Review a Determination
of Stock Transfer Taxes Due pursuant
to Article 12 of the Tax Law for the
Year 1971.

Applicant, Colin Hochstin Co., 120 Broadway, New York,
New York 10005, filed an application under section 179(a) of
the Tax Law for a hearing to review a determination of stock
transfer taxes due under Article 12 of the Tax Law. Said de-
termination was issued by notice dated January 3, 1973, and
is in the amount of \$5,252.20.

A hearing was duly held on July 15, 1975, at 1:30 p.m.
at the offices of the State Tax Commission, Two World Trade
Center, New York, New York, before Nigel G. Wright, Hearing
Officer. The applicant appeared by its employee, Lewis
Sperber. The Miscellaneous Tax Bureau appeared by Saul Heck-
elman, Esq. (Alexander Weiss, Esq. of counsel).

The record of said hearing has been duly examined and
considered.

ISSUE

The issue in this case is whether certain securities delivered by a partner to a brokerage house and later delivered back to him were subject to stock transfer taxes on such deliveries.

FINDINGS OF FACT

1. In September, 1971, Mr. Colin was approached by Mr. Hochstin with a proposition to organize a stock brokerage firm. Mr. Hochstin had an option, if he could raise the necessary capital, to remain recognized by the New York Stock Exchange as a specialist in stock rights traded on the Exchange. He had been so recognized when he was with his former firm of Scheinman, Hochstin and Trotta which, however, was being merged with another firm. Mr. Hochstin's right to this business was subject, however, to the acquisition of capital and the formation of a firm by October 1, 1971, and quick action was necessary.

2. Mr. Colin had to raise two million dollars to use as his capital contribution to the firm. Mr. Colin raised one million dollars on a loan from Chase Manhattan Bank on the security of 140,000-shares of Grand Union common stock borrowed for this purpose from his mother-in-law, Evelyn Green. The cash was contributed to the firm. This is not an issue in this case.

3. The other one million dollars was raised by Mr. Colin by borrowing securities from his wife, Cynthia G. Colin, and from three trusts: a trust for the benefit of the issue of Cynthia G. Colin of which Mr. Colin and his wife were the trustees; a trust for the benefit of Laura M. Colin and a trust for the benefit of Ann M. Colin, both of which had as trustees Mr. Colin, his wife and his wife's brother, S. William Green. The trusts maintained accounts at the brokerage house of Lazard Freres & Company.

4. The certificates were delivered by the trusts' broker to another broker, E. H. Smith, Jacobs & Company, on whose premises the Green family and Mr. Colin had their own office. Mr. Colin acting through Mr. Sperber, arranged that all existing indebtedness against the securities be paid off.

5. These securities were then delivered physically to Mr. Lewis Sperber, acting as agent for Mr. Colin, who in turn delivered them to Mr. Bongiovanni, the cashier of Colin Hochstin Co., at that firm's place of business on several dates in October, 1971.

6. There is testimony that Mr. Sperber intended that Mr. Bongiovanni should use the securities in question as collateral for a bank loan to Mr. Colin, individually. The cash from the bank loan would then be used as Mr. Colin's contribution to the firm. It was explained that a contribution of securities directly to the firm would not have been acceptable

because of fluctuations in the prices of the securities. It was not explained, however, why the same securities would be acceptable to a bank for the same amount of cash as was needed for the contribution to the firm. No contemporaneous documentary evidence of such intent has been offered.

7. Mr. Bongeovanni not having explicit directions credited the securities to "partners subordinated capital investments".

8. Because of a lack of evidence, it must be found that the transactions here in issue were not accompanied by a certificate, referred to in section 270, subd. 5 of the Tax Law, describing the transaction as a mere loan or as collateral security exempt from tax.

9. The firm was allowed to commence business on October 1, 1971, the New York Stock Exchange, having waived certain requirements.

10. The securities were at some time used as collateral security for a loan from First National City Bank, the bank where Colin Hochstin Co. maintained its account and where the predecessor firm, Scheinman, Hochstin & Trotta, had maintained its account. This loan was made to the firm of Colin Hochstin Co. on a demand basis and on terms common in loans to brokerage firms.

11. At some time in November, 1971, the firm delivered the securities back to Mr. Colin and reversed the entries in its own capital accounts. Mr. Colin returned the securities to the trusts which then sold them and turned the cash proceeds over to Mr. Colin as a loan. Mr. Colin then contributed the cash to the capital of the firm.

12. The partnership agreement to form Colin Hochstin Co. was entered into on September 27, 1971, between Mr. Justin S. Colin and Roger Jay Hochstin. Contributions would be made to the general capital of the firm. Said agreement provides in paragraph 7 that "all securities, cash and other property . . . shall, forthwith upon receipt thereof by the partnership become and be partnership property . . ." Such capital contribution cannot be withdrawn except by a vote of the majority in interest in the firm. Upon the partner's withdrawal he has a claim to such securities and cash but such claim is made subordinate to the claims of the business creditors of the firm.

13. The partnership agreement was amended on December 30, 1971, "in order that said agreement may accurately reflect the intention of the parties" to delete paragraph 7 and to state that each partner "shall each individually retain full right, title and interest in and to any personal accounts they may maintain with the firm."

CONCLUSIONS OF LAW

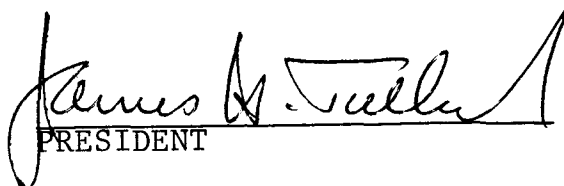
A. That the delivery of securities to the brokerage firm for use as subordinated capital comes within the language of section 270, subd. 1 of the Tax Law, which imposes a tax upon delivery of certificates, investing the holder" with the possession or use thereof for any purpose". Because of the lack of a contemporaneous certificate under section 270, subd. 5 of the

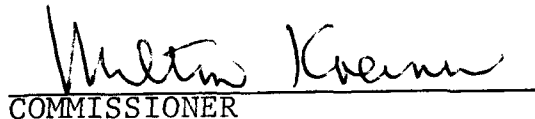
Tax Law it is irrelevant whether the transactions would have qualified as a deposit of collateral security or as a mere loan under sections 270, subd. 5(b) or 270, subd. 5(f).

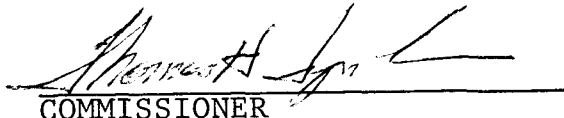
B. That the determination of taxes due under review is correct and such taxes are due.

DATED: Albany, New York
August 20, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER