

BUREAU OF LAW

MEMORANDUM

Income Tax Determinations
A-2
Marion, Virginia H.

TO: Commissioners Murphy, Palestin and Macduff

FROM: E. H. Best, Counsel

SUBJECT: VIRGINIA W. MARION

Article 16 of the Tax Law
for the Year 1957

The question at issue is whether or not distribution of the proceeds of the sale of one of three mills owned by the corporation in which the taxpayer was a stockholder, where the stockholders surrendered for redemption an applicable portion of their stockholdings, was the distribution of a taxable dividend pursuant to section 350, subdivision 15(c) of the Tax Law or a partial liquidation resulting in a capital gain pursuant to section 350, subdivision 15(f) of the Tax Law.

The facts herein disclose that the corporation, engaged in the manufacturing of dress fabrics in three mills, decided to close down one mill which was consistently unprofitable. The proceeds of the sale were distributed to the stockholders, the stockholders surrendering for redemption an applicable portion of the stockholdings. The hearing officer, Mr. Gifford, is of the opinion, as stated in his memorandum to the Director of the Income Tax Bureau, that a partial liquidation resulted.

The resolution of the question depends (1) whether or not a partial liquidation can exist unless it represents one of the steps in a complete liquidation of the corporation, and (2) whether there was a genuine contraction of the business resulting in a partial liquidation. As set forth by the hearing officer, the Income Tax Bureau decision was that no partial liquidation could exist unless it represented one of the steps in a complete liquidation. This position, similar to that taken by the Internal Revenue Service interpreting section 115 of the 1928 Revenue Act and continued in the provisions of the 1939 Code, was upset by the Circuit Court of Appeals in the case of Cordingley v. Commission, 78 F. 2d 118.

The preliminary hearing officer was of the opinion that the Federal government allowing the distribution to be deemed a partial liquidation did so under the technical provision of 346-b of the Internal Revenue Code of 1954 and would not have so ruled under section 115 of the 1928 Internal Revenue Act. While section 346 of the Internal Revenue Code restated and modified the

former provisions of section 115 of a prior act by setting forth certain additional criteria, it did not eliminate the instances of partial liquidation which were permitted under the 1928 Act. Whether or not the Federal government would have held a partial liquidation under the 1928 Act is the question herein. The preliminary hearing officer concedes that where there is a genuine contraction a partial liquidation results as in the case of the Matter of Joseph Linler, 11 T.C. 836, where the company contracted after a fire had destroyed part of its building. The preliminary hearing officer, however, makes reference to Revenue Ruling 60-322, IRB 1960-41 which held that when a corporation which had substantial accumulated earnings, but due to a steady decline in the demand for its products, distributed cash realized from the sale of portfolio bonds and assessed inventories to its stockholders in redemption of a part of its stock, such distribution did not constitute a partial liquidation. The situation here is quite different. Here there was a complete cessation and discontinuance of a portion of the taxpayer's entire business and not a distribution of earnings from the sale of inventory or portfolio securities.

Accordingly, I am of the opinion that the hearing officer is correct in his contention that there was a partial liquidation of stock in accordance with section 350(15)(f) of the Tax Law giving rise to a capital gain and not normal income. If you agree, kindly sign the proposed determination and return the same to the Law Bureau for further processing.

/s/

E. H. BEST

Counsel

MS:ca

August 17, 1965

Approved

STATE OF NEW YORK

STATE TAX COMMISSION

IN THE MATTER OF THE APPLICATION OF

VIRGINIA W. MARION

FOR REVISION OR REFUND OF PERSONAL INCOME TAXES
UNDER ARTICLE 16 OF THE TAX LAW FOR THE YEAR
1957

Virginia W. Marion having filed an Application for Revision or Refund under Article 16 of the Tax Law for the year 1957 and a hearing having been held in connection therewith, and the matter having been duly examined and considered the State Tax Commission hereby

DETERMINES:

That the distribution of \$151,498.24 received by the taxpayer as a stockholder of Bloomsburg Mills, Inc., in 1957 constituted the receipt by her of a liquidating dividend in connection with the partial liquidation of such corporation and, as such, taxable as a capital gain as reported by the taxpayer on original return of income filed, pursuant to the provisions of Section 350, subdivisions 12 and 15 (f) of the Tax Law, rather than constituting a regular distribution of corporate earnings taxable at the full normal tax rates pursuant to the provisions of Section 359, subdivision 1 of the Tax Law, as contended by the Income Tax Bureau, and as used by such Bureau as the basis of issuing the additional taxes here at issue (as set forth in the margin); that accordingly such additional taxes so assessed should be cancelled and stricken from the record and, to the extent paid, should be refunded and IT IS SO ORDERED.

Dated: Albany, N. Y.,

1964.

THE STATE TAX COMMISSION


Commissioner

Commissioner


Commissioner

Year

1957

Assessment No.

B-765298

Amount

\$5,605.78