

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
HARRY S. DUBE and STEPHEN R. CASPER,
Individually and ~~as~~ copartners d/b/u
the firm name and style of :
CIRCUS MAGAZINE :
For a Redetermination of a Deficiency or
a Refund of Unincorporated Business
Taxes under Article(s) 23 of the
Tax Law for the Year(s) 1968 :

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

State of New York
County of Albany

Janet Mack, 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 29th day of January, 1975, she served the within
Notice of Decision (or Determination) by (certified) mail upon THE CIRCUS MAGAZINE
(~~representative of~~) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: The Circus Magazine
c/o Harry S. Dube
5700 Collins Avenue
Miami Beach, Florida 33140
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

29th day of January, 1975.

Patricia D. Manly

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
HARRY S. DUBE and STEPHEN R. CASPER
Individually and ^{of} as copartners d/b/u
the firm name and style of
CIRCUS MAGAZINE :
For a Redetermination of a Deficiency or
a Refund of **Unincorporated Business**
Taxes under Article ~~(a)~~ ^(s) 23 of the
Tax Law for the Year ~~(s)~~ 1968 :

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State of New York
County of Albany

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Notice of Decision (~~on Redetermination~~) by (certified) mail upon **Charles S.P. Barker,**
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 S. P. Barker, Esq.**
c/o Reavis & McGrath
One Chase Manhattan Plaza
New York, New York 10005
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29th day of January , 1975

Richard D. Manly

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

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For a Redetermination of a Deficiency or
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C.P.A.

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Edward H. Eisenstein, C.P.A.
1775 Broadway
New York, New York

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Sworn to before me this

29th day of January , 1975

Latherine D. Manly

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

HARRY S. DUBE

For a Redetermination of a Deficiency or
a Refund of **Personal Income**
Taxes under Article (a) 22 of the
Tax Law for the Year (s) 1968

AFFIDAVIT OF MAILING
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State of New York
County of Albany

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(~~XXXXXXXXXXXX~~) the petitioner in the within
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5700 Collins Avenue
Miami Beach, Florida 33140

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Sworn to before me this

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STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

HARRY S. DUBE

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For a Redetermination of a Deficiency or
a Refund of **Personal Income**
Taxes under Article(s) 22 of the
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State of New York
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Katherine D. Manly

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

HARRY S. DUBE

For a Redetermination of a Deficiency or
a Refund of **Personal Income**
Taxes under Article(s) **22** of the
Tax Law for the Year(s) **1968**

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29th day of January, 1975

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Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

STEPHEN R. and BONNIE F. CASPER

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

For a Redetermination of a Deficiency or
a Refund of **Personal Income**
Taxes under Article ~~(2)~~ 22 of the
Tax Law for the Year ~~(1967)~~ 1968

State of New York
County of Albany

Janet Mack , being duly sworn, deposes and says that
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Notice of Decision (~~on Redetermination~~) by (certified) mail upon Stephen R. and
Bonnie F. Casper (~~representative of~~) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mr. & Mrs. Stephen R. Casper
5509 Belmont Avenue
Cincinnati, Ohio

and by depositing same enclosed in a postpaid properly addressed wrapper in a
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Richard D. Mauley

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

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STEPHEN R. and BONNIE F. CASPER

AFFIDAVIT OF MAILING
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BY (CERTIFIED) MAIL

For a Redetermination of a Deficiency or
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Taxes under Article(s) 22 of the
Tax Law for the Year(s) 1968

State of New York
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Sworn to before me this

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Katherine H. Manly

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

STEPHEN R. and BONNIE F. CASPER

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

For a Redetermination of a Deficiency or
a Refund of **Personal Income**
Taxes under Article ~~20~~ 22 of the
Tax Law for the Year ~~1967~~ 1968

State of New York
County of Albany

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Sworn to before me this

29th day of January, 1975

Katherine D. Mauley

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

STATE TAX COMMISSION

MARIO A. PROCACCINO, PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

BUILDING 9, ROOM 214-A
STATE CAMPUS
ALBANY, N.Y. 12227

AREA CODE 518

ADDRESS YOUR REPLY TO

MR. WRIGHT 457-2655
MR. LEISNER 457-2657
MR. COBURN 457-2896

DATED: Albany, New York
January 29, 1978

The Circus Magazine
c/o Harry S. Dube
5700 Collins Avenue
Miami Beach, Florida 33140

Gentlemen:

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

Please take further notice that pursuant to Section(s) **722 and 690** of the Tax Law, any proceeding in court to review an adverse decision must be commenced within **4 months** from the date of this notice.

Any 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. These will be referred to the proper party for reply.

Very truly yours,

Nigel G. Wright
HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

MARIO A. PROCACCINO, PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

BUILDING 9, ROOM 214-A
STATE CAMPUS
ALBANY, N.Y. 12227

AREA CODE 518

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

MR. WRIGHT 457-2655
MR. LEISNER 457-2657
MR. COBURN 457-2896

DATED: Albany, New York
January 29, 1975

Mr. Harry S. Dube
3700 Collins Avenue
Miami Beach, Florida 33140

Dear Mr. Dube:

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

Please take further notice that pursuant to Section(s) **722 and 690** of the Tax Law, any proceeding in court to review an adverse decision must be commenced within **4 months** from the date of this notice.

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Nigel S. Wright
HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

AD-1.12 (8/73)



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

STATE TAX COMMISSION

MARIO A. PROCACCINO, PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

BUILDING 9, ROOM 214-A
STATE CAMPUS
ALBANY, N.Y. 12227

AREA CODE 518

ADDRESS YOUR REPLY TO

MR. WRIGHT 457-2655
MR. LEISNER 457-2657
MR. COBURN 457-2896

DATED: Albany, New York
January 29, 1975

Mr. & Mrs. Stephen R. Casper
5509 Belmont Avenue
Cincinnati, Ohio

Dear Mr. & Mrs. Casper:

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HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

AD-1.12 (8/73)

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
HARRY S. DUBE and STEPHEN R. CASPER, :
Individually and as copartners d/b/u :
the firm name and style of :
CIRCUS MAGAZINE :
for a Redetermination of a Deficiency :
or for Refund of Unincorporated Business :
Taxes under Article 23 of the Tax Law :
for the Year 1968. :

In the Matter of the Petition :
of :
HARRY S. DUBE :
for a Redetermination of a Deficiency :
or for Refund of Personal Income Taxes :
under Article 22 of the Tax Law for :
the Year 1968. :

CONSOLIDATED
DECISION

In the Matter of the Petition :
of :
STEPHEN R. and BONNIE F. CASPER :
for a Redetermination of a Deficiency :
or for Refund of Personal Income Taxes :
under Article 22 of the Tax Law for :
the Year 1968. :

Harry S. Dube and Stephen R. Casper, individually and as copartners d/b/u the firm name and style of Circus Magazine filed a petition for the redetermination of a deficiency issued under date of February 22, 1971, in the amount of \$2,884.16 plus interest of \$320.57 for a total of \$3,204.73 for unincorporated business taxes under Article 23 of the Tax Law for the year 1968.

Harry S. Dube filed a petition for a refund of \$1,346.87 out of estimated taxes which he had paid in personal income taxes under Article 22 of the Tax Law for the year 1968. Said claim was allowed only to the extent of \$498.68 plus interest of \$46.35 for a total of \$545.03 which has been refunded. The remainder of the claim was denied because of a finding that petitioner's total liability was \$1,601.32 instead of the total liability of \$753.13 shown on his resident and nonresident returns.

Stephen R. and Bonnie F. Casper filed a petition for the redetermination of a Deficiency issued under date of February 22, 1971, in the amount of \$828.29 plus a penalty under section 685(a) of the Tax Law of \$207.22 and interest of \$92.13 for a total of \$1,128.24 for personal income tax under Article 22 of the Tax Law for the year 1968.

A hearing was duly held on September 11, 1972, at the offices of the State Tax Commission, 80 Centre Street, New York, New York, before Nigel G. Wright, Hearing Officer. The petitioners were represented by Charles S.P. Barker, Esq., of Reavis & McGrath and

by Edward H. Eisenstein, C.P.A. The Income Tax Bureau was represented by Saul Heckelman, Esq., appearing by Solomon Sies, Esq., of counsel.

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

ISSUE

The issue in this case is whether the petitioners' partnership sold assets and realized income to itself or whether the individual partners sold their partnership interests with no income being realized by the partnership.

FINDINGS OF FACT

1. The Circus Magazine of 340 East 64th Street was a partnership organized in New York with Mr. Harry S. Dube and Stephen R. Casper as partners.

2. Mr. Dube had been in advertising prior to 1941. Since 1941, he has had a contract with the Ringling Brothers Circus (Ringling Bros.-Barnum & Bailey Combined Shows, Inc.) to publish a program for distribution at their shows. This contract extended through the 1971 season.

3. Mr. Casper is Mr. Dube's nephew. He became a partner of Mr. Dube in 1966, it being Mr. Dube's desire to retire shortly and arrange for Mr. Casper to take over the entire business. Each one contributed the same amount of cash. Mr. Dube was to receive a small salary after which profits were distributed equally. The partnership was to last until December 31, 1971. Mr. Dube contributed the Ringling Brothers' contract to the partnership with

provision made in the agreement for Mr. Dube's protection in the event of the early termination of the partnership. The Ringling Brothers Circus consented to the partnership.

4. In 1967, the Ringling Brothers Circus was sold by the Ringling and North families to a group of investors. The Ringling Brothers Circus then, on January 2, 1968, entered into a contract for the acquisition of Circus Magazine.

5. The contract provides that "Dube and Casper hereby sell, and Ringling Bros. hereby purchases, ... their entire partnership interests in Magazine ... ", "Magazine" referring to the "partnership transacting business under the name of the Circus Magazine ... " It also provides: "That Dube and Casper are all the partners of Magazine and own all the assets thereof, and have the absolute right to sell, transfer and assign all the assets of Magazine ..."

6. The purchase price was \$68,750.00 on the closing date, January 29, 1968, with three deferred payments annually thereafter, each contingent upon Mr. Dube's survival, of \$75,721.15, \$69,444.44 and \$62,500.00 each with interest of 4% a year from the date of the contract. In addition, Ringling Brothers Circus paid an amount to reimburse Mr. Dube and Mr. Casper for the costs already incurred of publishing for the 1968 season.

7. Mr. Dube changed his residence from New York to Florida on December 8, 1968. Mr. Casper was a nonresident of New York during 1968 and thereafter.

8. Each partner reported on his Federal income tax return the sale of a partnership interest each showing a cost basis of zero and reporting one-half of the total consideration but computing tax on only his one-half share of the amount received in 1968 - \$34,375.00.

9. Circus Magazine filed a New York partnership return for 1968 showing only certain small expenses and reporting a loss. The return was marked "final return".

10. Mr. Dube filed a timely New York resident return and later, an amended resident return and a nonresident return. He reported the sale of his partnership interest on his resident return.

11. Mr. Casper did not file a New York return for 1968.

CONCLUSIONS OF LAW

A. The petitioner, doing business as Circus Magazine, clearly sold the assets of the business either directly or in liquidation of the business under section 703(a) of the Tax Law, and the gain thereon is subject to tax under Article 23 of the Tax Law.

B. The deficiency is sustained and each and every petition is denied.


The refund claimed by Mr. Dube is granted.

DATED: Albany, New York
January 29, 1975

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER