



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  
5700 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 deci-  
sion 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

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.

- 6 -

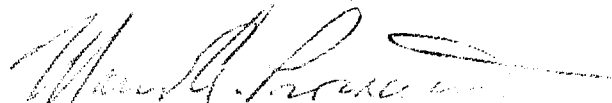
B. The deficiency is sustained and each and every petition is denied.


The refund claimed by Mr. Dube is granted.

DATED: Albany, New York

January 29, 1975

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER

STATE OF NEW YORK  
Department of Taxation and Finance

STATE CAMPUS  
ALBANY, N. Y. 12227

**CERTIFIED**

No. 202108

**MAIL**

RETURN TO  
TO  
SERIES  
FENSON C. GIBSON  
Undelivered  
Addressed  
Insufficient address  
No such street  
No such office in State  
Do not return to the envelope

MR. HARRY S. DUKE

5700 COLLINS AVENUE

MIAMI BEACH, FLORIDA

33140

*forwarded*





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

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 deci-  
sion 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

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/a**  
**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**  
**DECLARATION**

---

**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/a 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 and 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 \$328.29 plus a penalty under section 665(a) of the Tax Law of \$207.22 and interest of \$52.18 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 21, 1972, at the offices of the State Tax Commission, 90 Centre Street, New York, New York, before Nigel G. Wright, Hearing Officer. The petitioners were represented by Charles S.F. Barker, Esq., of Davis & Matthews.

by Edward H. Hisenstein, C.P.A. The Income Tax Bureau was represented by Saul Heckelman, Esq., appearing by Solomon Sles, 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 M. 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 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

8. Each partner reported on his Federal income tax return the sale of a partnership interest each showing a book 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. Duhe 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. Gaspar did not file a New York return for 1968.

CONCLUSIONS OF LAW

A. The petitioner, doing business as Circus Magazine, allegedly 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.



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, \$69,464.44 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.

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 COMMISSIONER

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER

STATE OF NEW YORK  
Department of Taxation and Finance

STATE CAMPUS  
ALBANY, N. Y. 12227

**CERTIFIED**

No. 202106

**MAIL**

Use of this envelope is required for all mail sent to the State of New York.  
If you are not a resident of the State of New York, you must indicate the State of New York as the destination.  
If you are not a resident of the State of New York, you must indicate the State of New York as the destination.  
If you are not a resident of the State of New York, you must indicate the State of New York as the destination.  
If you are not a resident of the State of New York, you must indicate the State of New York as the destination.

*Received*

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

*Forward Expired*





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:

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 deci-  
sion 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

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.

- 6 -

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

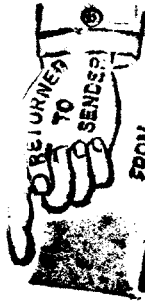
PRESIDENT

COMMISSIONER

COMMISSIONER

STATE OF NEW YORK  
Department of Taxation and Finance

STATE CAMPUS  
ALBANY, N. Y. 12227



FROM  
CINCINNATI, OHIO address

☐ Moved, full address

☒ No such number

☒ Moved; not forwardable

☐ Addressee unknown

058-36-0976

Mr. & Mrs. Stephen R. Casper

5509 Belmont Avenue

Cincinnati, Ohio

**CERTIFIED**

No. 202107

**MAIL**

28