

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ALVIN E. & FLORENCE SHULMAN

For a Redetermination of a Deficiency or
a Revision of a Determination or a Refund
of Personal Income
Taxes under Article(s) 22 of the
Tax Law for the Year(s) ~~xxxx Period(s)~~
1964.

AFFIDAVIT OF MAILING

State of New York
County of Albany

Jean Wager, 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 September, 1976, she served the within Notice of Decision by (certified) mail upon Alvin E. and Florence Shulman (~~representative of~~) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mr. and Mrs. Alvin E. Shulman
60 Farmstead Road
Short Hills, New Jersey

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 the~~) 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 September, 1976

Jean Wager

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ALVIN E. & FLORENCE SHULMAN

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or
a Revision of a Determination or a Refund
of Personal Income
Taxes under Article (2) 22 of the
Tax Law for the Year (1964) or Period(s)
1964.

State of New York
County of Albany

Jean Wager, 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 September, 1976, she served the within Notice of Decision by (certified) mail upon Arnold Fisher, Esq.

(representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed

as follows: Arnold Fisher, Esq.
c/o Lowenstein and Spicer
744 Broad Street
Newark, New Jersey

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 the) 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 September, 1976.

Jean Wager

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N.Y. 12227

ADDRESS YOUR REPLY TO

September 29, 1976

TELEPHONE: (518) 457-3850

Mr. and Mrs. Alvin E. Shulman
60 Farmstead Road
Short Hills, New Jersey

Dear Mr. and Mrs. Shulman:

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

Please take further notice that pursuant to
Section(x) **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.

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 B. Coburn
Paul B. Coburn
Supervising Tax
Hearing Officer

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
ALVIN E. & FLORENCE SHULMAN : DECISION
for a Redetermination of a Deficiency :
or for Refund of Personal Income Tax :
under Article 22 of the Tax Law for :
the Year 1964. :

Alvin E. & Florence Shulman, 60 Farmstead Road, Short Hills,
New Jersey, filed a petition under section 689 of the Tax Law for the
redetermination of a deficiency issued under date of March 11, 1968,
in the amount of \$4,794.16 plus interest of \$865.21 and a penalty under
section 685(b) of the Tax Law of \$248.71 for a total of \$6,088.08 for
personal income taxes under Article 22 of the Tax Law for the year 1964.
(File No. 13450385)

A hearing was held on May 18, 1972, at the offices of the State
Tax Commission, 80 Centre Street, New York City, before Nigel G. Wright,
Hearing Officer. The petitioners were represented by Arnold Fisher, Esq.,
of Newark, New Jersey.

The Income Tax Bureau was represented by Saul Heckelman, Esq.,
appearing by Francis X. Boylan, Esq. The record of said hearing has
been duly examined and considered.

ISSUE

The issue in this case is whether the petitioner, who had sold out to a remaining partner and who had not received a distributive share of the partnership income, is nevertheless taxable on a distributive share as declared on the partnership's tax return.

FINDINGS OF FACT

1. Petitioner, Alvin E. Shulman, at all times has been a resident of Short Hills, New Jersey, and a nonresident of New York. He was a partner in the firm of Martin Enterprises of 350 Fifth Avenue, New York City, with a Bernard Martin, a resident of New York. There was no written partnership agreement. The firm had been in business about seventeen years prior to 1965 and described itself as a metal broker. The partners were also equal shareholders in certain corporations.

2. Martin Enterprises reported on its 1964 Federal tax return ordinary income of \$66,655.79, salaries paid to partners of \$33,900.00 for a total of \$100,555.79 reported as net earnings from self-employment. These amounts were divided equally on the return; Mr. Shulman's share of the total being \$50,277.89.

The return also showed withdrawals from capital accounts of \$45,241.38 for Martin and \$19,846.39 for Shulman. Thus, Mr. Shulman's total withdrawals, including his salary of \$16,950.00, amount to \$36,796.39.

3. Mr. Shulman received only \$36,796.39 from the partnership in 1964 and nothing in later years. He has never received the amount of income (\$50,277.89) assigned to him on the 1964 partnership return. Mr. Shulman denies that any amount had ever been guaranteed to him as a "salary" and that denial has not been put in issue.

4. On February 5, 1965, Mr. Shulman and Mr. Martin signed an agreement whereby they agreed to dissolve the partnership. Shulman agreed to assign his partnership assets to Martin and Martin agreed to assume all partnership liabilities and obligations.

They also agreed that Shulman's share of the stock of four corporations would be assigned to Martin, that Shulman would forgive a debt of \$25,000.00 owed to him by one of the corporations; Shulman would pay an additional \$23,500.00 represented in notes. Certain delinquent accounts with a fair value of \$28,084.69 were placed in the hands of attorneys for the benefit of Shulman and Martin equally. Shulman was to receive from Martin a one-half equitable interest in a certain real estate corporation (which later became bankrupt). The agreement provided specifically that "Martin shall indemnify and save harmless Shulman against any and all claims hereinafter made against Shulman, whether for taxes or otherwise originating -- as a partner in

Martin Enterprises..." All "previous agreements" between the parties were declared cancelled and void.

5. Mr. Shulman, the petitioner, filed a 1964 New York nonresident return which showed no amount of ordinary income derived from the firm. However, he did declare as a long-term gain the amount of \$18,398.20, this being one-half of \$36,796.39 the total amount of cash in the form of "salary" and withdrawals he received from the partnership. This return was filed with the advice of an accountant. Mr. Shulman asserts that he reported a capital loss from this transaction in 1965, but no records as to 1965 are in evidence.

6. The deficiency notice in issue adds to Mr. Shulman's income the amount of \$50,277.89 as being derived from the partnership.

CONCLUSIONS OF LAW

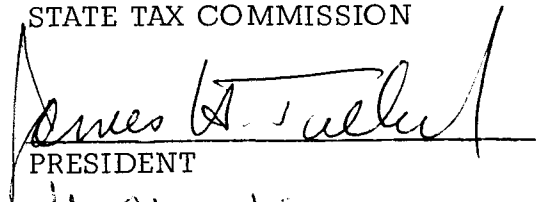
The agreement of February 5, 1965, is effective to modify any partnership agreement as to 1964 income (26 U.S.C., § 761 (c); U.S. Treas. Reg. 1.761-1(c)). This agreement can be interpreted only to mean that the continuing partner, Mr. Martin, would receive the income of the firm and Mr. Shulman would receive or had received only a liquidating distribution which would not be considered to be derived from the ordinary income of the partnership

for income tax purposes (Hyman Smith v. C.I.R., 331 F2d 298). The proper treatment of the cash received as liquidating distributions is not in issue.

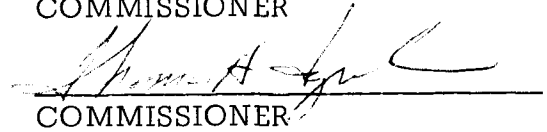
The deficiency is erroneous in its entirety and is cancelled.

DATED: Albany, New York
September 29, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER