

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
RALPH BONOMO
and
BENJAMIN GOODMAN

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article (x) 22 of the :
Tax Law for the Year(s) ~~xx~~ Period(s) :
1964, 1965 and 1966.

State of New York
County of Albany

Marsina Donnini, 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 21st day of June, 1977, she served the within
Notice of Decision by (certified) mail upon Ralph Bonomo
(~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. Ralph Bonomo
43 The Hemlocks
Roslyn Estates, New York 11576
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
21st day of June, 1977

Marsina Donnini

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
RALPH BONOMO
and
BENJAMIN GOODMAN
For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article(x) 22 of the :
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1964, 1965 and 1966.

AFFIDAVIT OF MAILING

State of New York
County of Albany

Marsina Donnini, 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 21st day of June, 1977, she served the within
Notice of Decision by (certified) mail upon Benjamin Goodman

~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows:

Mr. Benjamin Goodman
9 Rogers Road
Great Neck, New York 11024

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)~~
~~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

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STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
RALPH BONOMO
and
BENJAMIN GOODMAN
For a Redetermination of a Deficiency or :
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of Personal Income :
Taxes under Article (22) of the :
Tax Law for the Year(s) ~~or Period(s)~~ :
1964, 1965 and 1966.

AFFIDAVIT OF MAILING

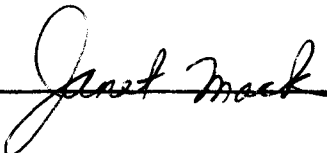
State of New York
County of Albany

Marsina Donnini, 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 21st day of June, 1977, she served the within
Notice of Decision by (certified) mail upon Isaac S. Canetti
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows:
Isaac S. Canetti, Esq.
475 Fifth Avenue
New York, New York 10017
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

21st day of June, 1977





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

June 21, 1977

TELEPHONE: (518) **457-1723**

Mr. Ralph Bonomo
43 The Hemlocks
Roslyn Estates, New York 11576

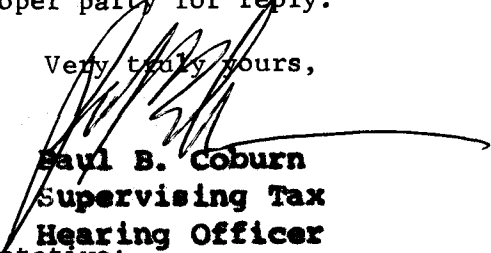
Dear Mr. Bonomo:

Please take notice of the **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
Supervising Tax
Hearing Officer

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:



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

June 21, 1977

TELEPHONE: (518) **457-1723**

Mr. Benjamin Goodman
9 Rogers Road
Great Neck, New York 11024

Dear Mr. Goodman:

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

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Section(**X**) **690** of the Tax Law, any
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Supervising Tax
Hearing Officer
cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petitions	:	
of	:	
RALPH BONOMO	:	
and	:	DECISION
BENJAMIN GOODMAN	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Years	:	
1964, 1965 and 1966.	:	

Petitioners, Ralph Bonomo, 43 The Hemlocks, Roslyn Estates, New York 11576, and Benjamin Goodman, 9 Rogers Road, Great Neck, New York 11024, filed petitions for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1964, 1965 and 1966. (File Nos. 01121 and 01120).

A formal hearing was held before Michael Alexander, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on November 15, 1976 at 1:30 p.m. The petitioners, Ralph Bonomo and Benjamin Goodman, appeared by Isaac S. Canetti, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (James A. Scott, Esq. of counsel).

ISSUE

Whether income received from the operations of Tri Continental Sales Co., a partnership between the petitioners, each as a trustee under trust agreements for their children, was income attributable to the trustees as individuals, and subject to personal income tax.

FINDINGS OF FACT

1. Petitioners, Ralph Bonomo and Benjamin Goodman, were issued statements of audit changes dated September 28, 1970, indicating personal income tax due for 1964, 1965 and 1966 of \$10,822.75 and \$11,780.16, plus interest, respectively. Accordingly, respective notices of deficiency in those amounts were issued to the petitioners on September 28, 1970.

2. Petitioners, Ralph Bonomo and Benjamin Goodman, were the principal shareholders and full-time employees of Republic Commercial Corp., with offices at 1290 Avenue of the Americas, New York, New York. This corporation imported Japanese fabric which was subsequently sold. Petitioner, Ralph Bonomo, received wages from that corporation of \$36,000.00 in 1964, \$42,000.00 in 1965 and \$48,000.00 in 1966. Such wages represented virtually all of petitioner, Ralph Bonomo's income as reported on his New York State personal income tax returns. Petitioner, Ralph

Bonomo's wife, Ann B. Bonomo, received wages from the same corporation of \$5,870.00 in 1964, \$5,800.00 in 1965 and \$5,800.00 in 1966. Petitioner, Benjamin Goodman, received wages from Martha Dean, Inc., with offices at the same address, 1290 Avenue of the Americas, New York, New York, in the same amounts and for the same years as did petitioner, Ralph Bonomo. Such wages represented virtually all of petitioner, Benjamin Goodman's income reported on his New York personal income tax returns for the years 1964, 1965 and 1966. Petitioner, Benjamin Goodman's wife, Barbara Goodman, also received wages from Martha Dean, Inc. of \$5,850.00 in 1964, \$5,400.00 in 1965 and \$5,800.00 in 1966.

3. On May 20, 1963, petitioner, Ralph Bonomo, made a trust agreement with his wife, Ann B. Bonomo, wherein she was the grantor of three trusts for her three children, the trustee being petitioner, Ralph Bonomo. The grantor irrevocably assigned to the trustee the trust property, \$100.00, for the purposes of the trusts stated therein to be the provision of regular income and material comforts for the children during their lives. Two of the children were minors and did not have the capacity to manage their interest, and one was approximately 20 years of age and was attending college and medical school during the years in question.

4. On May 20, 1963, petitioner, Benjamin Goodman, made a trust agreement with his wife, Barbara Goodman, wherein she was the grantor of three trusts for her three minor children who were without capacity to manage their interest, the trustee being petitioner, Benjamin Goodman. The grantor irrevocably assigned to the trustee the trust property, \$100.00, for the purposes of the trusts which are identical to those in the Trust Agreement described in Finding of Fact "3" above.

5. Both Trust Agreements provided that the trustee shall pay the entire net income of each of the trusts, annually, to the beneficiaries of the trusts, and pay over absolutely to such beneficiaries at age 40 the entire corpus. The trustees were empowered to borrow money for any purposes of the trusts, or incidental to the administration thereof, upon their bond or promissory notes as trustee, and were also empowered to lend money to any person or persons upon terms in such manner and with security as the trustee deems advisable for the best interests of the trusts and the beneficiaries thereunder.

6. On May 20, 1963, Ralph Bonomo, as trustee for the three trusts for his children, and Benjamin Goodman, as trustee for the three trusts for his children, entered into a Partnership Agreement for the purpose of engaging in the business of sales

agents. (See Finding of Fact "10", *infra*). The partnership formed was entitled Tri Continental Sales Co. The principal place of the partnership or the business was 1290 Avenue of the Americas, in the offices of Republic Commercial Corp., for which the business paid some rent to that corporation. (See Finding of Fact "11", *infra*).

7. The original capital of the partnership was the \$200.00 assigned to the trustees from the six trusts. This capital account remained constant for the years in question.

8. The Partnership Agreement provides, in paragraph 5 that "Whenever required in the business of the partnership, capital shall be contributed by the fiduciary parties herein, equally, and shall share in partnership profits and losses in the same purportion [sic]."

9. On May 24, 1963, Ralph Bonomo and Benjamin Goodman, as trustees, filed a Business Certificate for Partners for Tri Continental Sales Co. in the offices of the County Clerk, New York County.

10. A May 31, 1963 letter of agreement between Tri Continental Sales Co. and Tri Continental Fabrics, Inc., drafted by the latter, provided that the company was to serve as exclusive sales agent in the United States of the products of

the corporation's mills in Japan, for a commission on net sales. The sole business of the partnership was to handle the sales of the fabrics of the corporation. Capital played, at best, a minimal role in the conduct of such business. The letter of agreement did not indicate any awareness that the company was a partnership of trustees.

11. Tri Continental Sales Co. had one primary salesman who had some authority over other salesmen and in negotiating prices with customers and suppliers. Total commissions paid in 1964, 1965 and 1966 were \$15,990.00, \$18,006.50 and \$28,930.00, respectively. Rent paid by the partnership was \$1,041.67 in 1964. In 1965, however, rent is combined in an entry on the U.S. Partnership Return with "travel, entertainment and clerical" and with "clerical & telephone" in 1966. The deductions claimed were \$11,712.85 and \$11,500.00, respectively. No evidence was adduced in regard to the company having any clerical staff. The two trustees signed checks and oversaw and consulted with the primary salesman.

12. The partnership distributed income to the trustees who filed the required fiduciary returns. All taxes on the pro rata portions of the trust attributable to the individual beneficiaries were paid.

13. The ordinary income of Tri Continental Sales Co. for the years 1964, 1965 and 1966 was \$43,427.59, \$85,915.23 and \$74,944.03, respectively. This income was divided equally between the two trustees.

14. Tri Continental Sales Co. received loans from the beneficiaries of the trusts of their distributive shares after taxes had been paid. Such loans comprised a substantial portion of their distributive shares in the years in question. No evidence was adduced in regard to an actual transfer of the income of the partnership to the beneficiaries.

15. The beneficiaries of the trusts had loans payable to them from the company of \$58,194.66 on December 31, 1964, \$95,572.73 on December 31, 1965, and \$68,829.93 on December 31, 1966. The cash assets of Tri Continental Sales Co. was \$7,564.66 on December 31, 1964, \$54,474.23 on December 31, 1965, and \$74,740.93 on December 31, 1966.

16. In 1963, Tri Continental Sales Co. made a loan of \$25,000.00 to Scottlee Maintenance Corp., a corporation engaged in floor waxing and office cleaning. The balance due on this loan was \$19,000.00 by the end of 1964, and \$13,500.00 by the end of 1965. No evidence of any security or of interest provisions was adduced. Another loan of \$1,000.00 was made in

1963 to Bann Realty Associates. The principals of that company were the wives of the two taxpayers (the grantors of the trusts involved herein) and Norman Schlessinger. No evidence of any security or of interest provisions was adduced regarding this loan.

17. In 1964, Tri Continental Sales Co. made a loan of \$40,000.00 to Republic Commercial Corp. (Finding of Fact "2", supra). No reduction of this loan occurred in the following year nor was any evidence adduced as to the repayment, security or interest rates involved in this transaction.

18. In 1965, Tri Continental Sales Co. made a loan of \$1,500.00 to Miss Dayne Fashions. No evidence was adduced as to the terms or the repayment of this loan.

19. The loans receivable of Tri Continental Sales Co. on December 31, totalled \$26,000.00 for 1963, \$59,000.00 for 1964, \$55,000.00 for 1965 and \$7,800.00 for 1966.

20. No salary or commissions were paid to either trustee in the years in question.

21. No intent was expressed to have the children enter the business or to induce such future participation.

CONCLUSIONS OF LAW

A. That capital was not a material income producing factor in the partnership, Tri Continental Sales Co.

B. That a family partnership is subject to particular scrutiny, and that, considering all the facts, the trusts did not, in good faith and acting with a business purpose, genuinely intend to join together in the present conduct of the enterprise and, accordingly, conduct such business.

C. That the trusts were not the bona fide members of the partnership and that the income of the partnership was derived from the services of the petitioners, which income they controlled as related and subordinate parties, utilizing that income in the form of loans by the beneficiaries to the company, which in turn made loans to a corporation of which the two husbands were the principal shareholders, and to a company in which the two grantors were principals.

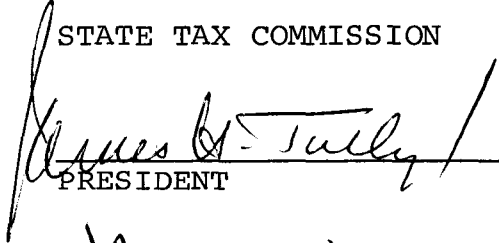
D. That the petitioners, Ralph Bonomo and Benjamin Goodman, as individuals, conducted the business of Tri Continental Sales Co. and earned the income therefrom.

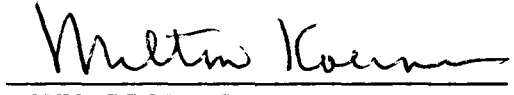
E. That the petitioners, Ralph Bonomo and Benjamin Goodman, are each taxable on one-half the income of Tri Continental Sales Co.

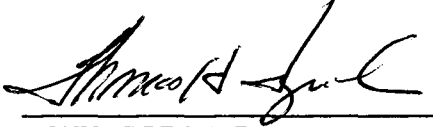
F. That the petitions of Ralph Bonomo and Benjamin Goodman are denied and the notices of deficiency issued September 28, 1970 are sustained.

DATED: Albany, New York
June 21, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER



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

June 21, 1977

TELEPHONE: (518) 457-1723

Mr. Benjamin Goodman
9 Rogers Road
Great Neck, New York 11024

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of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to
Section(~~x~~) 690 of the Tax Law, any
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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
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Very truly yours,

Paul B. Coburn
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cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petitions	:	
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and	:	DECISION
BENJAMIN GOODMAN	:	
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CONCLUSIONS OF LAW

A. That capital was not a material income producing factor in the partnership, Tri Continental Sales Co.

B. That a family partnership is subject to particular scrutiny, and that, considering all the facts, the trusts did not, in good faith and acting with a business purpose, genuinely intend to join together in the present conduct of the enterprise and, accordingly, conduct such business.

C. That the trusts were not the bona fide members of the partnership and that the income of the partnership was derived from the services of the petitioners, which income they controlled as related and subordinate parties, utilizing that income in the form of loans by the beneficiaries to the company, which in turn made loans to a corporation of which the two husbands were the principal shareholders, and to a company in which the two grantors were principals.

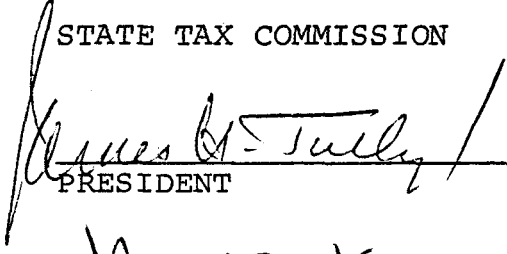
D. That the petitioners, Ralph Bonomo and Benjamin Goodman, as individuals, conducted the business of Tri Continental Sales Co. and earned the income therefrom.

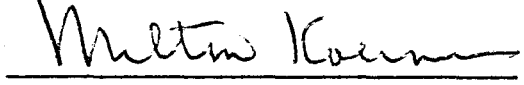
E. That the petitioners, Ralph Bonomo and Benjamin Goodman, are each taxable on one-half the income of Tri Continental Sales Co.

F. That the petitions of Ralph Bonomo and Benjamin Goodman are denied and the notices of deficiency issued September 28, 1970 are sustained.

DATED: Albany, New York
June 21, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER