

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

RUBIN SENOR AND CECILE SENOR

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or
a Revision of a Determination or a Refund
of Personal Income & Unincorporated Business
Taxes under Article(s) 22 & 23 of the
Tax Law for the Year(s) ~~XXXX~~ ~~XXXX~~
1970 through 1972

State of New York
County of Albany

John Huhn, being duly sworn, deposes and says that

He is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 1st day of September, 1977, he served the within

Notice of Decision by (certified) mail upon Ira J. Palestin, Esq.

(representative of) the petitioner in the within proceeding,

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

as follows: Ira J. Palestin, Esq.
529 Fifth Avenue
New York, New York

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

1st day of September, 1977.

Janet Marsh

John Huhn

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

RUBIN SENOR AND CECILE SENOR

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income & Unincorporated Business :
Taxes under Article (s) 22 & 23 of the :
Tax Law for the Year(s) or Period(s) :
1970 through 1972.

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 16th day of August, 1977, she served the within Notice of Decision by (certified) mail upon Rubin Senor & Cecile Senor

~~(representative of)~~ the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Rubin Senor & Cecile Senor
186 Riverside Drive
New York, New York 10024

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

16th day of August, 1977.

Marsina Donnini

Janet Mack

In the Matter of the Petition

of

RUBIN SENOR AND CECILE SENOR

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income & Unincorporated Business :
Taxes under Article(s) 11-13 of the :
Tax Law for the Year(s) or Period(s) :
1970 through 1972.

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 16th day of August, 1977, she served the within Notice of Decision by (certified) mail upon Ira J. Palestin, Esq.

(representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Ira J. Palestin, Esq.
520 Fifth Avenue
New York, New York

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
16th day of August, 1977.

Marsina Donnini

Janet Mack



STATE OF NEW YORK
STATE TAX COMMISSION
TAX APPEALS BUREAU
ALBANY, NEW YORK 12227

August 16, 1977

JAMES H. TULLY JR., PRESIDENT
MILTON KOERNER
THOMAS H. LYNCH

Rubin Senor & Cecile Senor
186 Riverside Drive
New York, New York 10024

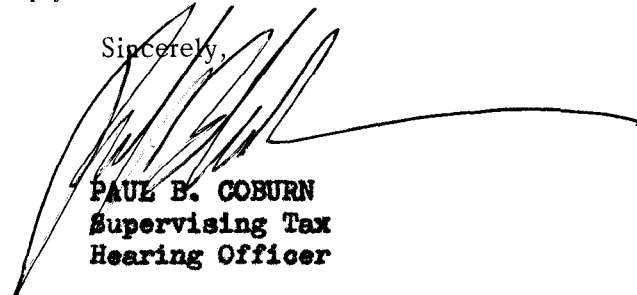
Dear Mr. & Mrs. Senor:

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

You have now exhausted your right of review at the administrative level. Pursuant to section(s) **690 & 722** of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within **4 Months** from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,



PAUL B. COBURN
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 :
RUBIN SENOR AND CECILE SENOR : DECISION
for Redetermination of a Deficiency or :
for Refund of Personal Income and :
Unincorporated Business Taxes under :
Articles 22 and 23 of the Tax Law for :
the Years 1970 through 1972. :

Petitioners, Rubin Senor and Cecile Senor, 186 Riverside Drive, New York, New York 10024, filed petitions for redetermination of a deficiency or for refund of personal income and unincorporated business taxes under Articles 22 and 23 of the Tax Law for the years 1970 through 1972. (File No. 00409).

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 October 28, 1976 at 10:45 A.M. and continued on October 29, 1976 at 10:45 A.M. The petitioners appeared by Ira J. Palestin, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Arnold Dorman, Esq., of counsel).

ISSUE

I. Whether the transfers of funds from a corporation, the sole shareholder therein being petitioner, Rubin Senor, to a

related unincorporated business, also conducted by petitioner, Rubin Senor, constituted constructive dividends paid to petitioners, Rubin Senor and Cecile Senor and, as such, were income subject to personal income tax.

II. Whether petitioners' deductions for domestic travel were properly disallowed by the Income Tax Bureau.

FINDINGS OF FACT

1. Petitioner, Rubin Senor, filed New York State unincorporated business tax returns for the business income of General Yarns Converting Co., for the years 1970 through 1972. Petitioners, Rubin Senor and Cecile Senor, his wife, filed New York State personal income tax returns for the years 1970 through 1972. The business income from the unincorporated business was included in the computation of adjusted gross income on the personal income tax returns.

2. On June 24, 1974, the Income Tax Bureau issued a Statement of Audit Changes to Rubin Senor and Cecile Senor, his wife, stating additional personal income tax due of \$12,803.72, plus penalty of \$13.25 (pursuant to section 685(c) of the Tax Law) for 1970, \$242.90 for 1971, and \$263.99, plus a penalty of \$126.30 pursuant to section 685(c) for 1972, plus interest to date for all three years. Accordingly, a Notice of Deficiency was issued on June 24, 1974, asserting additional personal income tax due for the three years in question, plus penalties and interest, in the sums stated in the Statement of Audit Changes.

3. On June 24, 1974, the Income Tax Bureau also issued a Statement of Audit Changes to Rubin Senior, stating additional unincorporated business tax due for the years 1970 through 1972 in the sums of \$253.53, \$2,510.88 and \$686.16, respectively, plus interest to that date on the total for the three years. Accordingly, a Notice of Deficiency was issued on June 24, 1974, asserting additional unincorporated business tax due for the years 1970 through 1972 in the sum of \$3,450.57, plus interest to that date of \$439.89.

4. Both statements of audit changes contained computations in accordance with schedules resulting from a field audit, said schedules having been attached to the statements sent to petitioners. The petitioners concede, and do not contest those portions of the schedule of audit adjustments regarding "interest income deemed business income" in 1970 and 1971, unsubstantiated contributions disallowed for all three years, home entertainment disallowed for all three years and unsubstantiated rent expense disallowed for all three years. Although the audit adjustment for "domestic travel disallowed as unsubstantiated" was not conceded, no evidence was adduced in this regard. The contested audit adjustment contained in the schedule was one made for "Constructive Dividend resulting from interest-free loans from corporations in which taxpayer is the sole stockholder for which notes were never issued. Loans were not reflected in the corporation balance sheet as loans to stockholders."

5. Petitioner, Rubin Senor, was the sole shareholder of General Yarns Converting Corporation, the business of which was the buying and selling of yarn at wholesale. Petitioner was also the sole owner of General Yarns Converting Company, an unincorporated business engaged in the business of processing and converting yarn.

6. In the conduct of business, transfers of funds were frequently made by the corporation to the company for the purchase of inventory in instances, and transfers of funds were also made by the company to the corporation. The books and records of both business entities reflect a number of transfers of funds between the corporation and the company in the years in question, most of which money was utilized to pay accounts payable. These transfers of funds were made without any notes therefor and without any interest charged thereon. During 1970, most of the transfers of funds were made from the corporation to the company. Seventy five thousand dollars of these funds transferred in 1970, which constituted most of the money transferred, was done by the drafting of a check by the corporation, which checks and check stubs contained a notation "loan."

7. Records of the corporation indicate that by August of 1973, the company had made sufficient payments to the corporation (with the checks and check stubs marked "return loan" in most instances) that the balance between the two entities had shifted, with the corporation now indebted to the company. The audit adjustment schedules are dated December 20, 1973.

8. The corporation, which was a fiscal year taxpayer with its taxable year ending on June 30, showed net income and available cash for the fiscal years ending June 31, 1970 and June 30, 1971 on the balance sheets filed with its Federal returns. These balance sheets and attachments thereto also listed, under other assets in the years in question, an amount of money due from the converting company.

CONCLUSIONS OF LAW

A. That the transfer of funds from the corporation to the company were made on an "open account" arrangement which reflected the mutual business interests of two related businesses.

B. That, based on all the facts and circumstances, and after evaluating the actions of petitioners regarding the two businesses at the time of withdrawal of funds from the corporation, such transfers were intended as loans and were intended to be repaid.

C. That where the transfers of funds constitute loans, no constructive dividend arises.

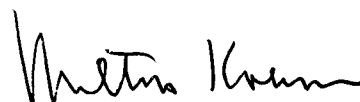
D. That the petitions of Rubin Senor and Cecile Senor are granted to the extent that the Notice of Deficiency issued June 24, 1974 for personal income tax is modified by the deletion of the tax due on additional income, for a constructive dividend in 1970; that the Income Tax Bureau is hereby directed to accordingly

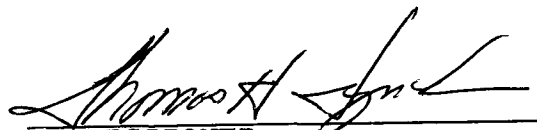
modify said notice of deficiency; that except as so granted, the petitions are denied; and that except as so granted, the notices of deficiency for personal and unincorporated business taxes issued on June 24, 1974 for the years 1970 through 1972 are sustained, together with such penalty and interest as may be lawfully due.

DATED: Albany, New York
August 16, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

TA-26 (4-76) 25M

FORMAL HEARING

STATE OF NEW YORK

Department of Taxation and Finance

TAX APPEALS BUREAU

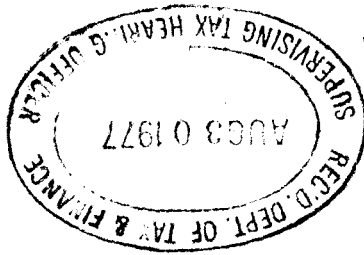
STATE CAMPUS

ALBANY, N. Y. 12227



ADDRESSEE UNKNOWN
NEW YORK, N.Y. 10036

Ira J. Palestin, Esq.
509 ~~52~~ Fifth Avenue
New York, New York



X
133049

