

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Estate of George L. Maxwell :
George L. Maxwell, Jr., Executor : AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of :
Personal Income Tax :
under Article 22 of the Tax Law :
for the Year 1967. :

State of New York
County of Albany

Jay Vredenburg, 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 31st day of October, 1980, he served the within notice of Decision by certified mail upon Estate of George L. Maxwell, George L. Maxwell, Jr., Executor, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

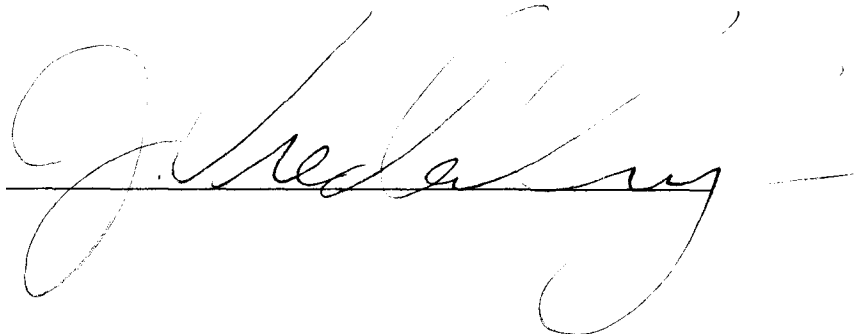
Estate of George L. Maxwell
George L. Maxwell, Jr., Executor
c/o Forsythe, LeViness & Pearson
375 Park Ave.
New York, NY 10022

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 petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
31st day of October, 1980.

Deborah A Bank



A large, stylized handwritten signature in cursive script, likely belonging to Jay Vredenburg, is written over a horizontal line.

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Estate of George L. Maxwell :
George L. Maxwell, Jr., Executor : AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of :
Personal Income Tax :
under Article 22 of the Tax Law :
for the Year 1967. :

State of New York
County of Albany

Jay Vredenburg, 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 31st day of October, 1980, he served the within notice of Decision by certified mail upon Thomas R. LeViness the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

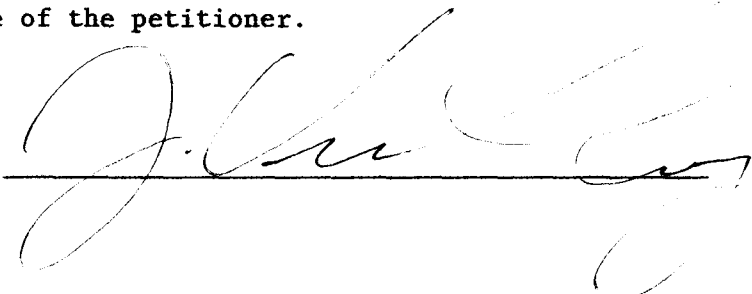
Mr. Thomas R. LeViness
Forsythe, LeViness & Pearson
375 Park Ave.
New York, NY 10022

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
31st day of October, 1980.

Deborah A. Bank



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

October 31, 1980

Estate of George L. Maxwell
George L. Maxwell, Jr., Executor
c/o Forsythe, LeViness & Pearson
375 Park Ave.
New York, NY 10022

Dear Mr. Maxwell:

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 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:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Thomas R. LeViness
Forsythe, LeViness & Pearson
375 Park Ave.
New York, NY 10022
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
ESTATE OF GEORGE L. MAXWELL : DECISION
(GEORGE L. MAXWELL, JR., EXECUTOR) :
for Redetermination of a Deficiency or :
for Refund of Personal Income Tax under :
Article 22 of the Tax Law for the Year :
1967. :

Petitioner, Estate of George L. Maxwell, George L. Maxwell, Jr., Executor, c/o Forsythe, LeViness & Pearson, 375 Park Avenue, New York, New York 10022, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1967 (File No. 01331).

A formal hearing was held before Archibald F. Robertson, Jr., Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on October 30, 1978 at 10:45 A.M. Petitioner appeared by Forsythe, LeViness & Pearson (Thomas R. LeViness, Esq., of counsel). The Audit Division appeared by Peter Crotty, Esq. (Frank Levitt, Esq., of counsel).

ISSUE

Whether petitioner used the proper basis in determining gain from the sale of a stock exchange membership.

FINDINGS OF FACT

1. George L. Maxwell and his wife, Helene E. Maxwell, timely filed a New York State Combined Income Tax Return for 1967. They subsequently filed an amended return which was received by the Department of Taxation and Finance on May 7, 1968. Mr. Maxwell died on June 16, 1971.

2. On April 14, 1971, the Audit Division issued a Notice of Deficiency against George L. Maxwell for \$8,000.00 plus interest. The deficiency was issued because the Division disallowed the claimed cost basis of \$230,000.00 which was the price paid by Mr. Maxwell on August 4, 1933 for a New York stock exchange membership. The Division recomputed the gain using a basis of \$70,000.00 which represented an average amount based on all available information.

3. In 1937, Mr. Maxwell transferred his membership ("the Seat") to a Mr. Potter under an "ABC agreement", reserving the right to cause a sale of the Seat whenever he chose. This transfer was structured as a sale rather than as a rental to avoid conflict with Stock Exchange regulations against rental of memberships.

4. From 1937 through 1948, the Seat purchased by Mr. Maxwell in 1933 for \$230,000.00 and transferred to Mr. Potter in 1937 under the ABC agreement, was an asset of the partnership of which Mr. Maxwell was a member partner.

5. The terms of partnership agreements entered into on May 20, 1942 and January 1, 1943 indicated that Mr. Maxwell retained the right to receive interest at the rate of six percent per annum based on a percentage of the market value of the seat. He also retained the right to designate the new owner of the Seat if Mr. Potter withdrew from the partnership (sub-paragraph A); to receive the proceeds of sale in the event Mr. Potter was required to sell the Seat (sub-paragraph B); and to receive the market value of the Seat if Mr. Potter withdrew from the partnership (sub-paragraph C). These provisions were continued by an agreement dated December 29, 1944.

6. Mr. Maxwell did not, among those incidents of beneficial ownership he retained, have the power to cause the return of his original Seat.

7. The ABC agreement was of a type not then recognized by the rules of the New York Stock Exchange.

8. In 1948, Mr. Potter withdrew from the partnership, purchased another Seat for \$42,000.00, and transferred it to Mr. Maxwell in satisfaction of all obligations under the ABC agreement. Mr. Potter retained the original Seat.

9. The Seat transferred to Mr. Maxwell in 1948 differed from that involved in the original ABC agreement in that the "returned" Seat had a higher identifying number.

10. Mr. Potter's transfer of a Seat to Mr. Maxwell in 1948 was a transfer in lieu of Mr. Potter's duty to pay the market value of the 1933 Seat to Mr. Maxwell.

11. At the hearing, petitioner did not establish the 1948 market value of the 1933 Seat.

12. On March 23, 1967, Mr. Maxwell sold for \$290,000.00 the New York Stock Exchange Seat he acquired from Mr. Potter in 1948.

13. At the hearing, the Audit Division requested that the deficiency be increased using the cost basis of the Seat acquired in 1948 of \$42,000.00 rather than a basis of \$70,000.00.

CONCLUSIONS OF LAW

A. That the transfer of the first Seat from Mr. Maxwell to Mr. Potter in 1937 did not constitute a sale. The transfer of the second New York Stock Exchange Membership to petitioner in 1948 constituted the exchange of property of like kind and did not result in a recognized gain by virtue of section 354(1) of the Tax Law (Article 16 of the Tax Law, as in effect in 1948).

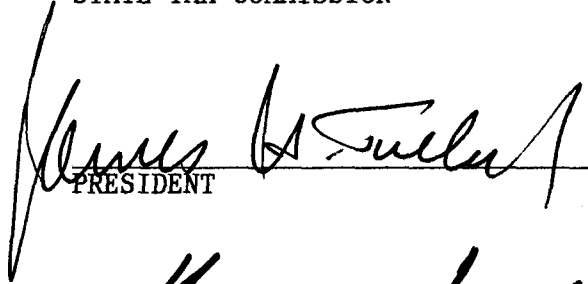
B. That the proper basis of the New York Stock Exchange Membership sold in 1967 was \$230,000.00 which amount was equal to the purchase price paid by petitioner in 1933.

C. That the petition of the Estate of George L. Maxwell is granted and the Notice of Deficiency issued on April 14, 1971 is cancelled.

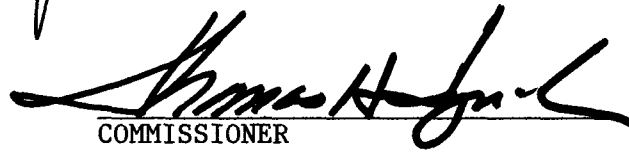
DATED: Albany, New York

OCT 31 1980

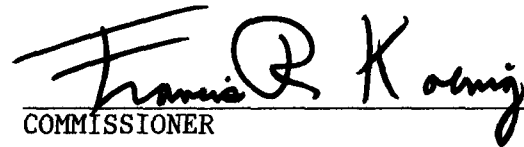
STATE TAX COMMISSION



PRESIDENT



COMMISSIONER



COMMISSIONER