

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Estate of Moses Cohen :
First National City Bank, 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 :
1973

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 28th day of August, 1981, he served the within notice of Decision by certified mail upon Estate of Moses Cohen, First National City Bank, Executor the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Estate of Moses Cohen
First National City Bank, Executor
(Now Citibank, N.A.)
1 Citicorp Center
New York, NY 10043

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
28th day of August, 1981.

Carrie A. Haglund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Estate of Moses Cohen :
First National City Bank, 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 :
1973

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 28th day of August, 1981, he served the within notice of Decision by certified mail upon Philip Pierce the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Philip Pierce
Booth, Lipton & Lipton
405 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
28th day of August, 1981.

Connie A. Hagelund

J. Vredenburg

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

August 28, 1981

Estate of Moses Cohen
First National City Bank, Executor
(Now Citibank, N.A.)
1 Citicorp Center
New York, NY 10043

Gentlemen:

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
Philip Pierce
Booth, Lipton & Lipton
405 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 MOSES COHEN,	:	DECISION
FIRST NATIONAL CITY BANK, EXECUTOR	:	
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1973.	:	

Petitioner, the Estate of Moses Cohen, First National City Bank (now Citibank, N.A.), Executor, 1 Citicorp Center, New York, New York 10043, 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 1973 (File No. 17923).

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 January 21, 1980 at 9:15 A.M. Petitioner appeared by Booth, Lipton & Lipton, Esqs. (Philip Pierce, Esq., of counsel). The Audit Division appeared by Ralph J. Vecchio, Esq. (Samuel J. Freund, Esq., of counsel).

ISSUE

Whether sums totalling \$46,356.65 paid to the Estate of Moses Cohen upon liquidation of a partnership constituted a distribution of partnership income or a repayment of loans for advances made on behalf of the partnership.

FINDINGS OF FACT

1. J. Cohen & Bros., a partnership in which Moses Cohen had been a partner, filed an amended New York State Partnership Return for the year 1973. Schedule K indicated a net gain of \$100,915.20 for each of the three partners derived "from sale or exchange of property used in trade or business and

certain involuntary conversions". The petitioner also filed a New York State Income Tax Fiduciary Return for the year 1973.

2. On September 17, 1975, the Audit Division issued a Statement of Audit Changes against petitioner for the year 1973. The Statement read, in part as follows:

"The capital gain (\$100,915.20 divided by 2) of \$50,457.60 from the 1973 partnership return of J. Cohen and Brothers should have been reported on the fiduciary income tax return in Schedule D. Also, the partnership income was understated by \$56,485.82.

The remainder of long term capital gain not subject to New York personal income tax is considered to be an item of tax preference and subject to New York minimum income tax.

Net long term capital gains are taxed by New York State at 60 percent rather than 50 percent. Accordingly, 20 percent of the capital gains deduction should be added to income."

Accordingly, the Audit Division issued a Notice of Deficiency for 1973 against petitioner on December 20, 1976, asserting income tax of \$16,887.02, plus interest of \$3,396.96, for a total due of \$20,284.01.

3. Petitioner timely filed a petition for redetermination of a deficiency or for refund of personal income tax for the year 1973.

4. On May 11, 1978, petitioner filed a perfected petition for redetermination of a deficiency or for refund of personal income tax for the year 1973.

5. J. Cohen & Bros. was a partnership engaged in the sale of wholesale and retail lumber in New York City. Moses Cohen, Irving Cohen and Harold Cohen shared one-third of the profits as partners. On September 25, 1973, New York State made a condemnation award for the partnership's property in the amount of \$302,745.60.

6. Moses Cohen died on April 5, 1971. In 1975, the partnership was dissolved and liquidated and subsequently, the proceeds of the condemnation

award were distributed to the three partners. The Estate of Moses Cohen received \$100,915.20, one-third share of the condemnation award.

7. The three partners, Moses Cohen, Irving Cohen and Harry Cohen, executed a Partnership Agreement, dated January 10, 1958, which provided that Moses Cohen was entitled to credit for the following:

Cash disbursements made by him for the partnership from January 1951 to March 1957 (net)	\$18,156.65
Interest paid by him to banks for the partnership from 1947 to 1956 estimated at	\$25,000.00
Interest paid by him to Chemical Bank for the partnership from 1955 to 1956 estimated at	\$ 2,500.00
Interest paid by him to Matthew Kaufman for the partnership in the sum of	<u>\$ 700.00</u>
TOTAL	<u>\$46,356.65</u>

8. The aforesaid sum of \$46,356.65 was not reflected as capital or as a liability on the books or in the records of the partnership.

9. Petitioner contends that the \$46,356.65 was extended on behalf of the partnership and, therefore, the condemnation award should be treated as repayment of the alleged loan.

10. Petitioner did not adduce evidence to verify or document the purposes for the \$18,156.65 cash disbursements by Moses Cohen or if in fact, interest was paid to "banks", Chemical Bank, and Matthew Kaufman as recited in the aforesaid Partnership Agreement.

CONCLUSIONS OF LAW

A. That petitioner has failed to establish the existence of a bona fide debtor/creditor relationship between Moses Cohen and the partnership. Thus, it has not sustained the burden of proof imposed by section 689(e) of the Tax Law

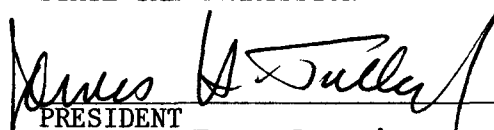
that the payment of \$46,356.65 to Moses Cohen was given in satisfaction of a purported debt.

B. That the petition of the Estate of Moses Cohen is denied and the Notice of Deficiency issued December 20, 1976 is sustained.

DATED: Albany, New York

AUG 28 1981

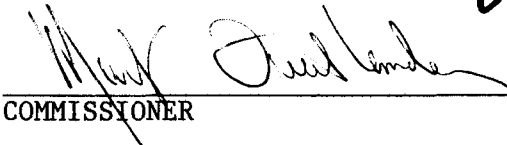
STATE TAX COMMISSION



PRESIDENT



COMMISSIONER



COMMISSIONER