

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Edward & Pauline G. Stanley :  
for Redetermination of a Deficiency or for Refund :  
of Personal Income Tax under Article 22 of the Tax :  
Law for the Years 1976 & 1977. :

AFFIDAVIT OF MAILING

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In the Matter of the Petition :  
of :  
Gloria Kirshner :  
for Redetermination of a Deficiency or for Refund :  
of Personal Income Tax under Article 22 of the Tax :  
Law for the Years 1973 and 1977. :

State of New York :

ss.:

County of Albany :

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 6th day of February, 1985, he served the within notice of Decision by certified mail upon Gloria Kirshner, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Gloria Kirshner  
156 East 79th Street  
New York, NY 10016

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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  
6th day of February, 1985.

David Parchuck

Bonnie A. Haglund  
Authorized to administer oaths  
pursuant to Tax Law section 174

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

February 6, 1985

Gloria Kirshner  
156 East 79th Street  
New York, NY 10016

Dear Ms. Kirshner:

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, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only under Article 78 of the Civil Practice Law 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  
Law Bureau - Litigation Unit  
Building #9, State Campus  
Albany, New York 12227  
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Jerome Volkman  
Jerome Volkman & Company  
310 Madison Avenue  
New York, NY 10017  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
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In the Matter of the Petition :  
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Gloria Kirshner :  
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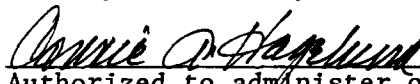
David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 6th day of February, 1985, he served the within notice of Decision by certified mail upon Edward & Pauline G. Stanley, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Edward & Pauline G. Stanley  
116 East 66th St.  
New York, NY 10021

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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  
6th day of February, 1985.

  
Authorized to administer oaths  
pursuant to Tax Law section 174



STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Edward & Pauline G. Stanley :  
for Redetermination of a Deficiency or for Refund :  
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AFFIDAVIT OF MAILING

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In the Matter of the Petition :  
of :  
Gloria Kirshner :  
for Redetermination of a Deficiency or for Refund :  
of Personal Income Tax under Article 22 of the Tax :  
Law for the Years 1973 and 1977. :

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State of New York :  
ss.:  
County of Albany :


David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 6th day of February, 1985, he served the within notice of Decision by certified mail upon Jerome Volkman, the representative of the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

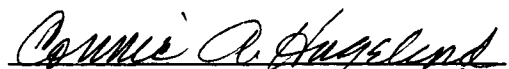
Jerome Volkman  
Jerome Volkman & Company  
310 Madison Ave.  
New York, NY 10017

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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  
6th day of February, 1985.



  
Authorized to administer oaths  
pursuant to Tax Law section 174

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

February 6, 1985

Edward & Pauline G. Stanley  
116 East 66th St.  
New York, NY 10021

Dear Mr. & Mrs. Stanley:

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, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only under Article 78 of the Civil Practice Law 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  
Law Bureau - Litigation Unit  
Building #9, State Campus  
Albany, New York 12227  
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Jerome Volkman  
Jerome Volkman & Company  
310 Madison Ave.  
New York, NY 10017  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
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EDWARD & PAULINE G. STANLEY	:	
	:	
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Years 1976 and 1977.	:	

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DECISION

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In the Matter of the Petition	:
	:
of	:
	:
GLORIA KIRSHNER	:
	:
for Redetermination of a Deficiency or for	:
Refund of Personal Income Tax under Article 22	:
of the Tax Law for the Years 1973 through 1977.	:

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Petitioners, Edward and Pauline G. Stanley, 116 East 66th Street, New York, New York 10021 and Gloria Kirshner, 156 East 79th Street, New York, New York 10016, filed petitions for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1973 through 1977 (File Nos. 34079, 34276 and 34277).

A formal hearing was held before Daniel J. Ranalli, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 24, 1984 at 1:15 P.M. Petitioners appeared by Jerome Volkman & Co. (Jerome Volkman, C.P.A.). The Audit Division appeared by John P. Dugan, Esq. (Irwin Levy, Esq., of counsel).

#### ISSUES

I. Whether loans made by a corporation, which was 80 percent owned by petitioners, to a partnership and a second corporation, both of which were

wholly owned by petitioners, constituted taxable dividend distributions to petitioners in 1976 and 1977.

II. Whether the Audit Division properly disallowed deductions claimed by petitioner Gloria Kirshner for certain expenses incurred in connection with the partnership business during tax years 1973 through 1977.

FINDINGS OF FACT

1. For tax years 1976 and 1977, petitioners Edward and Pauline G. Stanley filed New York State income tax resident returns with New York City personal income tax. Petitioner Gloria Kirshner filed no New York State or City income tax returns for the years 1973 through 1977 claiming that she was a resident of Florida. She has since conceded that she was subject to New York tax during said years.

2. On March 25, 1981 the Audit Division issued two notices of deficiency against petitioner Gloria Kirshner. The first was in the amount of \$2,392.68 plus penalty and interest of \$2,411.92 for a total due of \$4,804.60 for the years 1973 through 1975. The second notice was in the amount of \$10,389.37 plus penalty and interest of \$7,988.91 for a total due of \$18,378.28 for the years 1976 and 1977.

3. On March 25, 1981, the Audit Division issued a Notice of Deficiency against petitioners Edward and Pauline G. Stanley in the amount of \$5,398.47 plus interest of \$1,722.36 for a total due of \$7,120.83 for the years 1976 and 1977.

4. A Statement of Personal Income Tax Audit Changes issued to petitioners Edward and Pauline G. Stanley explained that certain loans made by Graphic Curriculum, Inc. ("Graphic"), of which Edward Stanley was the beneficial owner of 60 percent of the stock, were considered to be taxable distributions to the

stockholders. A similar statement issued to petitioner Gloria Kirshner likewise explained that loans from Graphic, of which she was a 20 percent stockholder, were considered to be taxable distributions. The statement further explained that expenses reflected on Gloria Kirshner's federal Schedule C were partnership expenses and as such were not allowable on her individual return.

5. During the years in issue, petitioner Gloria Kirshner owned a 50 percent interest in Teachers Guides to the Curriculum ("the partnership") and owned 50 percent of the outstanding stock of Teachers Guides to Television, Inc. ("Teachers Guides") in addition to her 20 percent ownership of Graphic. Petitioner Edward Stanley owned a 50 percent interest in the partnership and owned 50 percent of the outstanding stock of Teachers Guides in addition to his 60 percent beneficial ownership of Graphic. The remaining 20 percent of the outstanding stock of Graphic was owned by minority shareholders who were completely independent of and unrelated to petitioners and who owned no interest in either the partnership or Teachers Guides.

6. Graphic was engaged in the business of selling and renting educational films to various schools throughout the United States. During each of the years in issue Graphic received sales proceeds or rental income in connection with its business from fewer than 100 customers per year. The partnership and Teachers Guides were engaged in the publication of various written educational guides for distribution to schools throughout the country. The partnership was paid fees by various public corporations to publish and distribute these guides to schools without charge to the schools. Teachers Guides, on the other hand, engaged in the selling of these guides directly to various schools and received no fee income from public corporations.



7. The partnership distributed its guides to every junior high school, high school and college in the United States. Teachers Guides had a circulation of approximately 50,000 educational institutions and teachers. In connection with their respective businesses, both the partnership and Teachers Guides had substantial contacts with tens of thousands of schools throughout the country, and Mr. Stanley and Gloria Kirshner developed innumerable relationships with educators and educational institutions and associations throughout the country. Graphic was a smaller business and did no independent advertising and relied almost exclusively for its customers on the partnership and Teachers Guides and the ongoing relationships they cultivated with educators. Additionally, nearly all of Graphic's competitors were required to pay in advance for the films they acquired for sale or rent. Because of Graphic's nationwide access to potential customers through the partnership and Teachers Guides however, Graphic was able to induce filmmakers to supply it with films for sale or rent without advance cash payments.

8. During the years 1976 and 1977, the partnership shared the business offices of Graphic. At the end of each year, Graphic charged the partnership a share of the expenses, which charges were entered in Graphic's books as receivables due from the partnership. Additionally, Graphic paid certain expenses of Teachers Guides which expenses were also entered on Graphic's books as receivables due from Teachers Guides. During these years, both the partnership and Teachers Guides were cash poor, and required these advances from Graphic in order to stay in business. Had the partnership and Teachers Guides ceased operations and ceased contacts with educators, Graphic's primary source of customers for its business, as well as its ability to secure films without cash payment, would have disappeared.

9. The Audit Division determined that the advances made by Graphic to the partnership and Teachers Guides were constructive dividends to petitioners. Abstracts from the general ledger of Graphic indicate that an account was maintained for Teachers Guides and that both cash disbursements were made on Teachers Guides' behalf and that repayments on the loan account were made by Teachers Guides to Graphic. From October, 1977 through September, 1978, \$11,670.00 in such repayments were made.

10. With respect to the business expenses claimed by Gloria Kirshner on her federal Schedule C, petitioners submitted an affidavit from Edward Stanley to the effect that, as part of the partnership agreement, Gloria Kirshner would be required to bear certain expenses which she might incur in pursuit of the partnership's business in view of Edward Stanley's greater experience and better contacts in the business world. No evidence was offered indicating that this agreement had ever been reduced to a formal writing and no testimony or any other evidence was produced in support of the affidavit.

#### CONCLUSIONS OF LAW

A. That "[i]t is well established that a corporate distribution can be treated as a dividend if it is made for the personal benefit of a shareholder or in discharge of a personal obligation of a shareholder (citations omitted). If funds are advanced from one corporation to a related corporation, such advances may constitute a constructive dividend taxable to the shareholder who owns the two corporations if it is found that the advances were made primarily for his benefit (citations omitted)" (Ross Glove Co., 60 T.C. 569, 595. See also Walter K. Dean, 57 T.C. 32, 40).

B. That the businesses of Graphic, Teachers Guides and the partnership were so interdependent on each other for cash and customers as to demonstrate

a substantial business purpose for the inter-business advances made by Graphic to the other two companies. Moreover, the records of Graphic indicate that at least part of these advances were in the process of being repaid, further showing the absence of a primary benefit to the shareholders. The only tangible benefits which might ultimately inure to petitioners would be potentially increased profits or the relief from the necessity of infusing additional capital into the businesses. Either of these results is so removed from the primary purpose of maintaining a continuous flow of customers to Graphic as to take them out of the personal benefit rule enunciated supra. Therefore, the advances made by Graphic to Teachers Guides and the partnership are not to be considered to constitute taxable dividends to petitioners in 1976 and 1977.

C. That the affidavit of Edward M. Stanley contains statements material to the issue of Gloria Kirshner's business expenses. Inasmuch as the Audit Division has been deprived of an opportunity to confront and cross-examine Mr. Stanley, this Commission can predicate no finding of fact solely on the matters contained in the affidavit. Only those statements supported by other documentation can be considered in reaching a decision. (Matter of Yankee Accessory Corp., State Tax Commission, April 22, 1983). Since no evidence, other than the affidavit, was submitted to show that Gloria Kirshner's expenses were individual and not partnership expenses, petitioners have not met their burden of proof as provided for in section 689(e) of the Tax Law and the disallowance of the expenses as determined by the Audit Division is sustained.

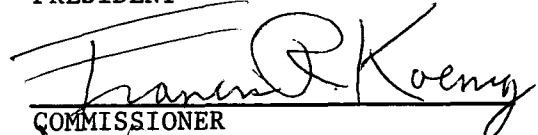
D. That the petitions of Edward and Pauline G. Stanley and Gloria Kirshner are granted to the extent indicated in Conclusion of Law "B"; that the Audit Division is directed to modify the notices of deficiency issued March 25, 1981 accordingly; and that, except as so granted, the petitions are in all other respects denied.

DATED: Albany, New York

FEB 06 1985

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER