

STATE OF NEW YORK
STATE TAX COMMISSION

U B T. V. ...
Amrodeen Management Company

In the Matter of the Petition :
: of :
: AMRODEEN MANAGEMENT COMPANY :
: For a Redetermination of a Deficiency :
: or a Refund of Unincorporated Business :
: Taxes under Article(s) 16-A of the Tax :
: Law for the year(s) 1955 and 1956 :
:

Affidavit of Mailing
of Notice of Decision,
by Registered Mail

State of New York
County of Albany

Patricia Whitman , being duly sworn, deposes and
says, that she is an employee of the Department of Taxation and
Finance, and that on the 4th day of June , 1969, she served
the within Notice of Decision (or of "Determination") by registered
mail upon Amrodeen Management Company
the petitioner in the within proceeding, by enclosing a true copy
thereof in a securely sealed postpaid wrapper addressed as follows:
Amrodeen Management Company, c/o Allan Bakst, 1 East 42nd Street,
New York, NY 10017
and by delivering the same at Room 214a, Building 8, Campus, Albany,
marked "REGISTERED MAIL" to a messenger of the Mail Room, Building
9, Campus, Albany, to be mailed by registered mail.

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

, 4th day of June , 1969 .

Grace E. Pritchard

Patricia Whitman

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
AMRODEEN MANAGEMENT COMPANY	:	Affidavit of Mailing
	:	of Notice of Decision,
	:	by Registered Mail
For a Redetermination of a Deficiency	:	
or a Refund of Unincorporated Business	:	
Taxes under Article(s) 16-A of the Tax	:	
Law for the year(s) 1955 and 1956	:	

State of New York
County of Albany

Patricia Whitman, being duly sworn, deposes and says, that she is an employee of the Department of Taxation and Finance, and that on the 4th day of June, 1969, she served the within Notice of Decision (or of "Determination") by registered mail upon Allan Bakst, Representative for the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Allan Bakst, Esq., 1 East 42nd Street, New York, NY 10017 and by delivering the same at Room 214a, Building 8, Campus, Albany, marked "REGISTERED MAIL" to a messenger of the Mail Room, Building 9, Campus, Albany, to be mailed by registered mail.

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
4th day of June, 1969.

John E. Pritchard

Patricia Whitman

To.....Mr. Rook.....

Prepared Determination and memorandum both done by me in 1964 and retyped in 1969 to be submitted to State Tax Commission. Received by me May, 1969; I think it is right and the law O.K.

A handwritten signature in dark ink, appearing to read 'F. X. Boylan', with a stylized, cursive script.

From Francis X. Boylan

PATCH T (FILE A)



BUREAU OF LAW

U. B. T. Determination A-Z

MEMORANDUM

Amrodeen Management Company

TO: **State Tax Commission**

FROM: **Francis X. Boylan, Hearing Officer**

SUBJECT: **Amrodeen Management Company - A partnership;
Unincorporated Business Tax Article 16-A;
Fiscal Years Ended 1955 and 1956**

The salient question presented by this case is whether interest received by a partnership in its fiscal years ended 1955 and 1956, on notes secured by a mortgage which it took back on a sale of real property that was the site of a hotel operated by the partnership until 1947, was income of the partnership in those fiscal years within the meaning of Tax Law Section 386-d as amended in 1952. The contention of the partnership basically is that the interest was income of the individuals making up the partnership, that it was not income derived from the partnership in carrying on its business even in liquidation, but was rather a receipt from the mortgage transaction which was liquidated earlier at the date of the sale, and thereafter was an "investment," so that the partnership in effect constituted an agency of the individuals for the purpose of receiving and paying over such interest.

The proposed determination holds that the interest received by the partnership was partnership income subject to unincorporated business tax and upholds the additional assessments made. I believe that the determination is correct.

The facts appear largely from the tax reports and other papers and no testimony was presented at the hearing to explain the transaction. Amrodeen Management Company was engaged in the business of operating a hotel in Manhattan until 1947 when it sold the real property that was the site of the hotel. The sale price was \$750,000 and payment was made by a down payment of \$150,000 by taking subject to a first mortgage, and by a series of installment payments on notes due in the following years, including the fiscal years ended 1955 and 1956. The unpaid balance of the purchase price was secured by a mortgage, and was at interest.

In the year of the sale, the fiscal year ended 1947, the partnership paid unincorporated business tax on its profits which, in addition to its income from operating the hotel, included the profit on the down payment, of \$150,000, in the amount of \$149,847. No interest was payable in that year evidently, and no interest receipts were reported.

In the years immediately following 1947 and before 1952, the profit on the installment payments was reported and the receipt of interest was reported, but neither was subject to unincorporated business tax, but was taxable in those years to the partners for normal income tax purposes.

After the amendment of Tax Law Section 386-d in 1952, the taxpayer in its returns for the fiscal years ended in 1953 and 1954, reported the profit on the installments received, as taxable gain to the partnership, but did not include the interest income reported, as partnership income that was subject to unincorporated business tax.

Additional assessments based on a determination that the interest constituted partnership income were made for those fiscal years, and those assessments were paid. The partnership similarly reported the installment payments and the interest in 1955 and 1956, paying tax only on the profits of the installments as gain, and filed applications for revision or refund in connection with the additional assessments at hand, which were based mainly upon the Department's determining the interest to be taxable as income to the partnership in those years.

Tax Law Section 386-d as amended in 1952, effective April 14, 1952, provides:

"The term 'gross income' includes gains, profits, and income derived by the unincorporated business of whatever kind and in whatever form paid, including gains, profits, or income from dealings, * * * or interest, * * * or gains or profits and income derived from any source whatever connected with the carrying on of such unincorporated business, including the liquidation of the assets or the collection of outstanding installment obligations of any * * * business * * *."

It seems to be clear that this language is sufficiently broad to include the interest in this case, since it derives "from a source connected with the carrying on" of the business where that language expressly includes liquidation of assets, etc., as the statute states.

In Shearson, Hammill & Co. v. State Tax Commission, it was held that where partners turned over to the partnership their privately held securities so that the partnership could pledge them, they could, and it was found, did reserve to themselves the interest. The Court held that the interest never became a partnership property. (Shearson, Hammill & Co. v. State Tax Commission, (1963) 19 A D 2d 245)

In contradistinction, it seems to be clear here that the interest was first payable to the partnership before it was distributable to the partners. No claim is made, nor was there any showing that the mortgagee was not the partnership rather than the individuals or that there was any actual assignment by the partnership to the individuals.

In a memorandum connected with the Hotel Windermere Trust, it was stated on the general question of interest on a mortgage on a sale of a business, that such interest would fall within the purview of "income derived in the course of liquidation," although the writer expressed some doubt that this was subjectively intended at the time of the 1932 change (Hotel Windermere Trust, memo M.W. July 9, 1936). Evidently the final ruling in the Hotel Windermere Trust included the upholding of a determination assessing unincorporated business tax based, in part, on interest on a mortgage under similar circumstances. (Memorandum Hotel Windermere Trust, September 18, 1937; page 2)

The attorney for the partnership in his memorandum takes the view that while the section intended to impose the tax on income realized during "liquidation," that this contemplated current sales in liquidation rather than a mortgage given some years earlier, which was to that extent a liquidation then of the partnership. However no retroactive application of the 1932 amendment is really involved in this case, since it is not contemplated by the statute that the sale be one made after 1932, but only that the partnership be still undissolved in carrying on a business in liquidation, and receive the income after 1932.

It is further argued that the taxpayer did not elect to employ the installment method for unincorporated business taxes even as to the gain in the year of the sale in the fiscal year ended 1947. This appears to be contrary to the fact since the tax was paid on the profits only of the installment for that year and the gain in that year was taxable even then as the sale of the assets of a going concern. Furthermore, the question involved here does not turn on the election of methods of paying the unincorporated business tax. The interest was in fact received in the years for which the additional assessments were made and, consequently, may properly be held to be income derived from a source connected with carrying on of the business, as defined after 1932.

The third point made, that the business had already been liquidated and that the notes were held for collection only, presents the only close question; as to the intent of the 1932 amendment. The Department in this case since the 1932

amendment has consistently ruled that the statutory language took in interest received in the circumstances here, and these rulings reflected what has been the Department's considered view on the general question. (Memorandum Deputy Commissioner Greene to Commissioner Kaseell, Hotel Windermere Trust, September 23, 1957) I believe these determinations were correct, and should be upheld.

The entire file is submitted herewith.

/s/

FRANCIS X. BOYLAN

Hearing Officer

FKB:ac
Enc.

November 16, 1964

OK MS

STATE OF NEW YORK

STATE TAX COMMISSION

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IN THE MATTER OF THE APPLICATION :

OF :

AMRODEEN MANAGEMENT COMPANY :

For revision or refund of unincorporated
business taxes under Article 16-A of the :
Tax Law, for the years 1955 and 1956 :
----- :

The State Tax Commission having assessed additional unincorporated business taxes on the income of the taxpayer partnership, Amrodeen Management Company, under Article 16-A of the Tax Law, for the fiscal years ended 1955 and 1956 by additional assessments numbered BF140066 and BF140067, both dated March 26, 1959, and said taxpayer partnership having filed applications for refund or revision related to such additional assessments and such applications having been denied; and a hearing having been held on February 25, 1964 at the offices of the New York State Department of Taxation and Finance, 80 Centre Street, New York, New York, before Francis X. Boylan, hearing officer, and the taxpayer having appeared by Alan Bakst, Esq. of New York, New York; and the record having been duly examined and considered.

The State Tax Commission hereby finds that:

(1) Amrodeen Management Company was a partnership and until 1947 it owned and operated a hotel in the borough of Manhattan in New York, New York; in that year it sold the real property which was the site of the hotel, and thereafter and during the years under consideration, the fiscal years ended 1955 and 1956, it continued in existence undissolved, maintaining an office in New York, New York, for the purpose of receiving and distributing to the partners the receipts of the partnership, which consisted of payments of installments on the balance of

the sale price of the said real property, and of related interest; and it distributed such net receipts to the partners in accordance with their shares in the partnership.

(2) In the fiscal years ended 1955 and 1956 the partnership reported in its Returns, receipts of payments of installments made in those years on notes for the balance of the purchase price of the real property and reported also the receipt of interest in the amount of \$16,361.42 in the fiscal year ended 1955, and of \$15,813.70 in the year ended 1956; on the portion of the installment payments that constituted profit, it paid unincorporated business tax as a taxable gain, but it excluded from its base of unincorporated business tax the income of the said interest received.

(3) On the returns for the years under consideration, the fiscal years ended 1955 and 1956, the State Tax Commission assessed additional unincorporated business tax, determining the receipt of said interest to constitute partnership income and disallowing also a minor expense claimed by the taxpayer for accountancy services; and the taxpayer partnership thereafter made applications for revision or refund in connection with said additional assessment on the grounds, as stated in said applications, that the receipt for the purpose of distribution to the individuals comprising the partnership, of installments of payments on a mortgage, did not constitute the partnership to be an unincorporated business at that time within the meaning of the law.

Upon the foregoing findings and all of the evidence presented herein, the State Tax Commission hereby

D E T E R M I N E S:

(A) That interest payments received and reported by the partnership in the fiscal years ended in 1955 and 1956 in the respective amounts of \$16,361.42 and \$15,813.70, which interest

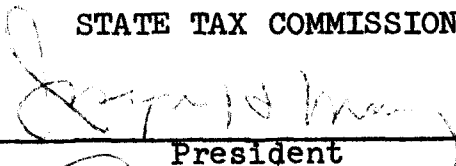
was paid on the unpaid balance of the sales price of a sale in 1947 of real property which was the site of a hotel then operated by the partnership, constituted taxable income of the taxpayer partnership as an unincorporated business in said years 1955 and 1956, pursuant to provisions of Tax Law Section 386-d as amended in 1952, being income derived from a source connected with the carrying on of such business as defined in said section as so amended to include the liquidation of a business's assets or the collection of its outstanding installment obligations.

(B) That the additional assessments made by reason of the receipt of said interest as income, and by the reason of other adjustments not challenged, were lawful and correct.

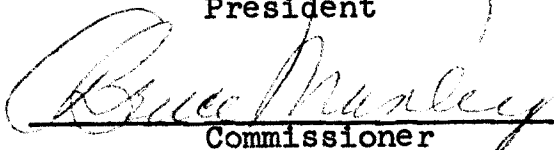
(C) That accordingly the additional assessments for the fiscal years ended 1955 and 1956 in the amounts of \$672.01 and \$654.44, as of the date of both said additional assessments, March 26, 1959, are affirmed; and the taxpayer's related applications for revision or refund are denied.

DATED: Albany, New York this 2nd day of June 1969.

STATE TAX COMMISSION



President



Commissioner



Commissioner