

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

FREIDAY & COMPANY

For a Redetermination of a Deficiency or
a Refund of Unincorporated Business
Taxes under Article(s) 23 of the
Tax Law for the (Year)s 1966

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

State of New York
County of Albany

JOYCE S. VAN PATTEN

, 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 1st day of December, 1972, she served the within
Notice of Decision (~~or Determination~~) by (certified) mail upon Jack Wong

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows:

Mr. Jack Wong
Oppenheim, Appel, Dixon & Co.
140 Broadway

New York, New York 10005
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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative
of) 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 December, 1972.

Naitha Funn

Joyce S. Van Patten

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

FREIDAY & COMPANY

For a Redetermination of a Deficiency or
a Refund of Unincorporated Business
Taxes under Article(s) 23 of the
Tax Law for the Year(s) 1966

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

State of New York
County of Albany

JOYCE S. VAN PATTEN, 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 1st day of December, 1972, she served the within
Notice of Decision (~~or Determination~~) by (certified) mail upon Freiday &
Company (~~representative of~~) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows:

Freiday & Company
60 Broad Street
New York, New York 10006

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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative
of) 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 December, 1972

Martha Furber

Joyce S. Van Patten



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

NORMAN F. GALLMAN, PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

BUILDING 9, ROOM 214A
STATE CAMPUS
ALBANY, N. Y. 12227

AREA CODE 518
457-2655, 6, 7

Rook
STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

Dated: Albany, New York

December 1, 1972

NIGEL G. WRIGHT

Freiday & Company
60 Broad Street
New York, New York 10006

Gentlemen:

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

Please take further notice that pursuant to **section 722 of**
the Tax Law any proceeding in court to review an adverse decision
must be commenced within **four months** after
the date of this notice.

Any inquiries concerning the computation of tax due or refund allowed
in accordance with this decision or concerning any other matter relat-
ing hereto may be addressed to the undersigned. These will be referred
to the proper party for reply.

Very truly yours,

NIGEL G. WRIGHT
HEARING OFFICER

cc Petitioner's Representative
Law Bureau

10/26/73

Copy sent to:

John O'Shea, Esq.
c/o Lewin Sternbach & Co.
10 E. 40th Street
New York, New York 10016

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
FREIDAY AND COMPANY	:	DECISION
for a Redetermination of a Deficiency	:	
or for Refund of Unincorporated Business	:	
Taxes under Article 23 of the Tax Law	:	
for the Year 1966.	:	

Freiday and Company filed a petition for a redetermination of a deficiency dated March 30, 1970, in unincorporated business taxes under Article 23 of the Tax Law for the year 1966.

A hearing was held on June 25, 1971, at the offices of the State Tax Commission, 80 Centre Street, New York City, before Nigel G. Wright, Hearing Officer. Jack Wong, of Oppenheim, Appel, Dixon & Co., C.P.A.'s represented petitioners. Edward H. Best, Esq. (Francis X. Boylan, Esq., of Counsel) represented the Income Tax Bureau.

The record of said hearing has been duly examined and considered.

ISSUE

The issue in this case is whether the gain from the sale of a stock exchange seat is income of the petitioner stock exchange firm.

FINDINGS OF FACT

1. Petitioner is engaged in the business of a stockbroker in New York City and is a member firm of the New York Stock Exchange. Part of their business is to act as specialists on the floor of the Exchange.

2. In 1962, Mr. Vincent La France, became a general partner of Freiday and Company. Prior thereto he had been a member of the stock brokerage firm of La France & Carmichael which had dissolved. Mr. La France had owned his own stock exchange seat in connection therewith. However, he had not yet paid in full for such seat and Freiday and Company agreed to loan him sufficient funds at 6% interest to purchase full ownership thereof.

3. The partnership agreement provided as follows: Mr. La France would contribute to the partnership the use of the stock exchange seat. Apart from trades for his own account all income derived from the use of said seat would be income of the partnership. The proceeds of the sale of any stock exchange seat would be the property of the individual partner and the firm would have no interest in any increase nor any liability for any decrease in value of any such seats. Mr. La France's seat however, was encumbered by the loan from the firm. For the use of the seat the firm paid the partner interest at the rate of 6% upon the value of such seat as revalued quarterly by reference to sales of other seats.

4. Mr. La France sold his stock exchange seat on February 28, 1966. He put additional capital in the partnership and continued as "both a general and limited partner" under a new partnership agreement dated March 1, 1966.

5. The deficiency in issue amounts to \$5,225.84 plus interest of \$927.38 for a total of \$6,153.22.

CONCLUSIONS OF LAW

The stock exchange seat in question was an asset of the firm

- 3 -

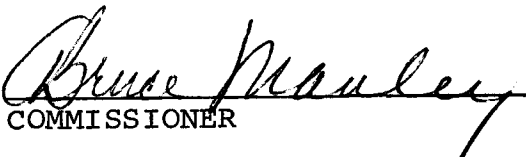
as a matter of law and the gain thereon is subject to tax. (See Gregory & Sons, State Tax Commission, June 19, 1972.)

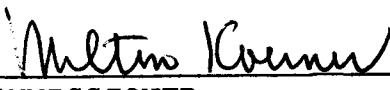
DATED: Albany, New York

STATE TAX COMMISSION

December 1, 1972


COMMISSIONER


COMMISSIONER


COMMISSIONER