

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

FREDERICK J. HART

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

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) 1965, 1966 & 1967

State of New York
County of Albany

Martha Funaro , 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 26th day of July , 19 72, she served the within
Notice of Decision (or Determination) by (certified) mail upon Frederick J. Hart

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Frederick J. Hart
Mustato
Katonah, New York

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

26th day of July , 1972.

Lynn Wilson

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

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a Refund of Unincorporated Business:
Taxes under Article(s) 23 of the
Tax Law for the (Year(s) 1965, 1966 & 1967

State of New York
County of Albany

Martha Funaro, 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 26th day of July, 1972, she served the within Notice of Decision (or Determination) by (certified) mail upon Simpson, Thacher & Bartlett, Esqs. (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Simpson, Thacher & Bartlett, Esqs.
One Battery Plaza
New York, New York
Attention Alan Johnson, Esq.
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

26th day of July, 1972.

Lynne Wilson

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

FREDERICK J. HART

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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) 1965, 1966 & 1967

State of New York
County of Albany

Martha Funaro, 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 26th day of July, 1972, she served the within
Notice of Decision (or Determination) by (certified) mail upon Sidney H. Greene

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: Sidney H. Greene
55 West 42nd Street
New York, New York 10036

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

26th day of July, 1972

Lynn Wilson

Martha Funaro



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE
BUILDING 9, ROOM 214A
STATE CAMPUS
ALBANY, N. Y. 12226

STATE TAX COMMISSION

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

AREA CODE 518
457-2655, 6, 7

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

Dated: Albany, New York

July 26, 1972

Frederick J. Hart
Mustato
Katonah, New York

Dear Mr. Hart:

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

Please take further notice that pursuant to
Section(s) **722** of the Tax Law, any
proceeding in court to review an adverse deci-
sion must be commenced within **4 Months**
from 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 relative
hereto may be addressed to the undersigned.
These will be referred to the proper party for
reply.

Very truly yours,


Paul E. Coburn

HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
FREDERICK J. HART	:	DECISION
for Redetermination of Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law	:	
for the Years 1965, 1966 and 1967.	:	

Petitioner, Frederick J. Hart, has filed a petition for redetermination of deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the years 1965, 1966 and 1967. (File No. 86542240). A formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York, on November 17, 1971, at 1:15 P.M. Petitioner appeared by Simpson, Thacher, & Bartlett, Esqs. (Alan Johnson, Esq. and Harold Handler, Esq., of Counsel). The Income Tax Bureau appeared by Edward H. Best, Esq., (Albert J. Rossi, Esq., of Counsel).

ISSUES

I. Was the salary income received by petitioner, Frederick J. Hart, from Moore & Schley, Inc. during the years 1965, 1966 and 1967 subject to the New York State unincorporated business tax?

II. Were certain payments alleged to be gifts received by petitioner, Frederick J. Hart, during the years 1965 and 1966 in fact fees for services as a financial advisor subject to the New York State unincorporated business tax?

III. Was the gain realized by petitioner, Frederick J. Hart, during the year 1965 from the sale of certain securities received in the liquidation of Moore & Schley subject to the New York State unincorporated business tax?

IV. Were the commissions received by petitioner, Frederick J. Hart, as a trustee and an executor during the years 1965, 1966 and 1967 subject to the New York State unincorporated business tax?

V. Were the fees received by petitioner, Frederick J. Hart, as a director of Coal Creek Mining and Manufacturing Company during the years 1965, 1966 and 1967 subject to the New York State unincorporated business tax?

VI. Did petitioner, Frederick J. Hart, have reasonable cause for failing to file New York State unincorporated business tax returns for the years 1965, 1966 and 1967?

FINDINGS OF FACT

1. Petitioner, Frederick J. Hart, filed New York State income tax resident returns for the years 1965, 1966 and 1967. He did not file New York State unincorporated business tax returns for the years 1965, 1966 and 1967.

2. On April 13, 1970, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Frederick J. Hart, imposing unincorporated business tax upon director's fees, fiduciary commissions, salary income, proceeds from the sale of securities, and other miscellaneous income received by him during the years 1965, 1966 and 1967 and accordingly issued a Notice of Deficiency in the sum of \$5,945.93.

3. Petitioner, Frederick J. Hart, was employed by Moore & Schley, Inc. during the years 1965, 1966 and 1967 as a registered representative. Moore & Schley, Inc. was a member firm of the New York Stock Exchange engaged in doing business with the general public for the purchase and sale of securities. Federal and New York State income taxes and social security tax were withheld from the salary paid to him. His services rendered for the company consisted of the supervision of larger accounts that had been with the firm for a

long time. He was listed in the telephone directory under his own name at the firm's telephone number. He employed his own secretary. He paid her salary and withheld federal and New York State income taxes and social security tax therefrom. She assisted him in the handling of the firm's accounts. Moore & Schley, Inc. supplied a typewriter and office space for her without charge. It also supplied office space and facilities without charge for petitioner. He received compensation from Moore & Schley, Inc. of \$18,000.00 in 1965, \$18,000.00 in 1966 and \$22,000.00 in 1967.

4. Petitioner, Frederick J. Hart, received payments during the year 1965, of \$3,000.00 from Ellen R. Schley and \$1,000.00 from Thomas W. Murphy. He received payments during the years 1966 of \$750.00 from Anne C. Stradling and \$750.00 from Kenneth B. Schley, Jr. He reported these payments as income items on his federal income tax returns for said years. He rendered financial advice to these individuals.

5. Moore & Schley was a partnership that preceded Moore & Schley, Inc. Both entities were engaged in the same business. Petitioner, Frederick J. Hart, was a limited partner of Moore & Schley. The partnership commenced a liquidation of its assets in 1964. He received in distribution certain securities in which the partnership acted as specialists on the New York Stock Exchange. He realized a gain of \$2,520.30 upon the sale of these securities in 1965. He was not a member of the New York Stock Exchange.

6. Petitioner, Frederick J. Hart, received commissions as a trustee of a trust created under the will of Kenneth B. Schley totaling \$593.18 during the year 1965 and \$3,678.14 during the year 1966. He received commissions as an executor under the will of Ellen R. Schley totaling \$18,000.00 in 1965, \$19,557.90 in 1966 and \$19,311.61 in 1967. He further received commissions as an executor under the will of Thomas W. Murphy totaling \$45,000.00

in the year 1967. These were the only estates or trust from which he received fiduciary commissions. He did not solicit business or hold himself out as a fiduciary. He was a close personal friend and business associate of Mrs. Schley and Mr. Murphy. In addition to naming him as an executor, they gave him personal bequests in their wills of \$5,000.00 and \$10,000.00 respectively.

7. During the years 1965, 1966 and 1967, petitioner was a director of Coal Creek Mining and Manufacturing Company. He had been a director of the corporation since 1946. He directly and indirectly owned slightly less than 10% of the stock of said corporation. His stock was worth approximately \$115,000.00. He was not a director of any other corporation. He received directors fees from said corporation totaling \$100.00 in 1965, \$100.00 in 1966 and \$50.00 in 1967.

8. Petitioner, Frederick J. Hart, did not file New York State unincorporated business tax returns for the years 1965, 1966 and 1967 upon the advice of his accountants.

CONCLUSIONS OF LAW

A. That the income received by petitioner, Frederick J. Hart, from Moore & Schley, Inc. during the years 1965, 1966 and 1967 constituted receipts from his regular business as an investment manager and not compensation as an employee exempt from the imposition of the unincorporated business tax in accordance with the meaning and intent of section 703(b) of the Tax Law.

B. That the income received by petitioner, Frederick J. Hart, from Ellen R. Schley and Thomas W. Murphy during the year 1965 and from Kenneth B. Schley, Jr. and Anne C. Stradling during the year 1966 constituted receipts from his regular business as an investment manager and not gifts exempt from the imposition of the unincorporated business tax.

C. That the gain realized by the petitioner, Frederick J. Hart, from the sale of securities distributed to him in liquidation of Moore & Schley, a partnership in which he was a limited partner, was not exempt from the imposition of the unincorporated business tax since the securities had been held by the partnership for sale to customers in the ordinary course of their business as specialists on the New York Stock Exchange in said securities in accordance with the meaning and intent of section 703(d) of the Tax Law.

D. That the services rendered by petitioner, Frederick J. Hart, as a trustee of a trust created under the will of Kenneth B. Schley, during the years 1965 and 1966, as an executor under the will of Ellen R. Schley, during the years 1965, 1966 and 1967 and as an executor under the will of Thomas Murphy during the year 1967 did not constitute services that were part of a business regularly carried on by him and, therefore, the trustee's and executor's fees received by him from said trust and estates were not subject to the unincorporated business tax in accordance with the meaning and intent of section 703(b) of the Tax Law.

E. That services rendered by petitioner, Frederick J. Hart, for Coal Creek Mining and Manufacturing Company during the years 1965, 1966 and 1967 as a director of said corporation did not constitute services that were part of a business regularly carried on by him and, therefore, the director's fees received by him from said corporation were not subject to the unincorporated business tax in accordance with the meaning and intent of section 703(b) of the Tax Law.

F. That petitioner, Frederick J. Hart, had reasonable cause for not filing New York State unincorporated business tax returns for the years 1965, 1966 and 1967, and, therefore, the penalty assessed pursuant to section 685(a) of the Tax Law is waived.

G. That the petition of Frederick J. Hart is granted to the extent of reducing taxable business income for the year 1965 from \$23,704.37 to \$7,008.95, for the year 1966 from \$21,404.00 to \$1,438.37, and for the year 1967 from \$60,504.27 to \$1,462.88, and of reducing the unincorporated business tax due for the year 1965 from \$948.17 to \$280.36, for the year 1966 from \$856.16 to \$0.00, and for the year 1967 from \$2,420.17 to \$0.00, and the Notice of Deficiency issued April 13, 1970, is reduced from \$5,945.93 to \$347.64, together with such interest as may be due from April 13, 1970, and, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

July 26, 1972

STATE TAX COMMISSION

Norman Gallman
COMMISSIONER

Bruce Manley
COMMISSIONER

Milton Korman
COMMISSIONER