

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
HILL, DARLINGTON & CO.

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) 1960

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

State of New York  
County of Albany

Rae Zimmerman, 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 17th day of March, 1972, she served the within  
Notice of Decision (or Determination) by (certified) mail upon Hill,  
Darlington & Co.

(representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Hill, Darlington & Co.  
P. O. Box 597  
Wall Street Station  
New York, 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

17 day of March, 1972.

Maitha Furaco

Rae Zimmerman

STATE OF NEW YORK  
STATE TAX COMMISSION

\_\_\_\_\_  
In the Matter of the Petition

of

HILL, DARLINGTON & CO.

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) 1960

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OF NOTICE OF DECISION  
BY (CERTIFIED) MAIL

\_\_\_\_\_  
State of New York  
County of Albany

Rae Zimmerman , 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 17th day of March , 1972 , she served the within  
Notice of Decision (or Determination) by (certified) mail upon Richard J.

Bartlett, Esq.

(representative of) the petitioner in the within

proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: Richard J. Bartlett, Esq.  
Clark, Bartlett & Caffry, Esqs.  
10 Harlem Street  
Glens Falls, 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

17th day of March , 1972.

Martha Furaw

Rae Zimmerman



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  
March 17, 1972

Hill, Darlington & Co.  
P. O. Box 597  
Wall Street Station  
New York, New York

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

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
THOMAS W. HILL, PETER DARLINGTON,	:	
BERNARD J. VANINGEN, et al.	:	
(Individually and as copartners	:	
D/B/U the firm name and style of	:	
HILL, DARLINGTON & CO.	:	DECISION
for a Redetermination of a Deficiency	:	
or for Refund of Unincorporated Business	:	
Tax for the year 1960.	:	

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The taxpayer filed a petition pursuant to sections 722 and 689 of the Tax Law for a redetermination of a deficiency asserted under date of April 11, 1966, for unincorporated business tax due under Article 23 of the Tax Law for the year 1960. A formal hearing has been duly held before Nigel G. Wright, Hearing Officer, at the offices of the State Tax Commission, Albany, New York on December 9, 1969.

Richard J. Bartlett, Esq. and Alan R. Rhodes, Esq. of Clark, Bartlett & Caffry represented petitioners. Edward H. Best, Esq. (Solomon Sies, Esq., of Counsel) represented the Income Tax Bureau. The record of such hearing has been duly examined and considered.

ISSUE

The issue in the case is whether the disposition by the partnership of the stock of a certain corporation was by a sale by the partnership to the purchaser and, therefore, taxable to the partnership or whether it was distributed by the partnership to the partners and thereafter sold by the partners so as not to be taxable to the

partnership. A part of the deficiency is due to federal audit changes and has been conceded by taxpayer.

FINDINGS OF FACT

1. Prior to 1960, taxpayer was a stock brokerage house, which owned the entire voting interest, consisting of 10,000 shares, in B. J. VanIngen Co., Inc., a municipal bond house. Its partners formed two interest groups: The VanIngen group which was interested solely in the corporation and who worked as officers of the corporation, and the Hill, Darlington group, who worked actively in the brokerage business and took little interest in the corporate business. Some, but not all, members of each group held nonvoting stock and five-year notes of VanIngen.

2. In 1960, the partners decided to sever the relationship between the brokerage business and the municipal bond house. An agreement dated January 4, 1960, was entered into by the partners of Hill, Darlington individually, providing that the VanIngen group would withdraw from the partnership and that they would receive, in liquidation of their interests, stock of the VanIngen corporation totaling 7,685 shares valued at a total of \$384,345.30. Further agreements were entered into dated January 13, 1960, each between the B. J. VanIngen Corporation and individuals who were partners of the partnership and members of the Hill, Darlington group. One agreement recited that the remaining 2,315 shares had been distributed to the remaining partners, that said remaining partners under the rules of the New York Stock Exchange were under a duty to dispose of such shares, and that B. J. VanIngen & Co., Inc. had a first option on such shares; and covenanted that each partner would sell to VanIngen, and VanIngen would buy, all shares totaling

2,315 for a price of \$50.00 a share, totaling \$115,750.00, on March 1, 1960. The second agreement dated January 13, 1960, was between VanIngen and the three individuals who had purchased the notes and Class B stock of VanIngen. VanIngen, having a first option on both the notes and the stock, liquidated the notes on January 13, 1960, by payment of the principal amount totaling \$82,133.34 plus interest to January 13, 1960, and purchased on March 1, 1960, from each seller, the Class B shares totaling 6,500 for a price of \$50.00 a share totaling \$325,000.00.

3. The single certificate for 10,000 shares was cancelled and taxpayer received back a single certificate for 2,315 shares in the name of the partnership. Taxpayer asserts that the certificate was in "street name" for the benefit of the investment accounts of the partners. No record appears on the books of the partnership showing a distribution of shares to the partners. No stock transfer tax was paid on the basis of such a transfer. At least one partner treated the transaction as a sale by himself for purposes of federal income tax.

4. The deficiency is for \$2,740.71, plus interest.

#### CONCLUSIONS OF LAW

The taxpayer has failed to carry the burden of proof that the disposition of the 2,315 shares was by a distribution to the partners instead of a sale by the partnership. The equivocal nature of the records of the partnership and the use of a single certificate are important factors in this decision.

DECISION

The petition is denied and the deficiency is affirmed together with such interest, if any, as may be due pursuant to the Tax Law.

DATED: Albany, New York

*March 17, 1972*

STATE TAX COMMISSION

*Norman Gallman*  
\_\_\_\_\_  
COMMISSIONER

*Bruce Manly*  
\_\_\_\_\_  
COMMISSIONER

*Melvin Korman*  
\_\_\_\_\_  
COMMISSIONER