

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) 16A of the
Tax Law for the (Year(s) 1956 through:
1959

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

17th day of March, 1972

Martha Furaid

Rae Zimmerman

STATE OF NEW YORK
STATE TAX COMMISSION

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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.

Matthew Luzzo

Rae Zimmerman



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A

STATE CAMPUS

ALBANY, N. Y. 12226

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION

NORMAN F. GALLMAN, ACTING PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

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 **Determination** of
the State Tax Commission enclosed herewith.

Please take further notice that pursuant to **section 386j** of
the Tax Law any proceeding in court to review an adverse decision
must be commenced within **90 days** 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

In the Matter of the Application	:	
of	:	
Thomas W. Hill, Peter Darlington,	:	
Bernard J. VanIngen, et al., indivi-	:	
dually and as copartners, d/b/u the	:	DETERMINATION
firm name and style of:	:	
HILL, DARLINGTON & CO.	:	
for Revision or Refund of Unincorporated	:	
Business Taxes under Article 16-A of the	:	
Tax Law for the years 1956 through 1959.	:	

The taxpayers filed an application pursuant to sections 386j and 374 of the Tax Law for refund of unincorporated business taxes under Article 16-A of the Tax Law paid under assessments dated March 31, 1966, for the years 1956 through 1959. Such application was denied and a hearing was demanded and 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 applicants. 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 is whether the taxpayer should be taxed on amounts received by some of its partners as salaries for services performed for a certain corporation. Other matters raised in the assessments and the applications have been conceded by the taxpayer.

FINDINGS OF FACT

1. Taxpayer is a stock brokerage business located in New York City and is a member firm of the New York Stock Exchange.

2. Prior to 1956, taxpayer was composed of five partners: Thomas W. Hill, Peter Darlington, Henry Darlington, Jr., Samuel Morse and Ernest M. Fuller. By agreement of June 12, 1956, four additional partners were admitted: Bernard J. VanIngen, Jr., L. Walter Dempsey, Duncan C. Gray and Albert F. Harbach. These are hereafter referred to as the VanIngen group. Between 1956 and 1960, four additional partners were admitted.

3. B. J. VanIngen Co. Inc., was a securities dealer and broker specializing in municipal bonds. It had been incorporated in New York and was engaged in business for 40 years prior to 1956. Its officers and principal stockholders in 1956 were Bernard J. VanIngen, Jr., L. Walter Dempsey, Duncan C. Gray and Albert F. Harbach.

4. In 1956, the VanIngen Co. needed capital and the taxpayer's firm and their members had capital to invest. The two firms decided to join their activities. The corporation was reorganized in Delaware and recapitalized to provide separate classes of voting and non-voting stock and five-year notes. The principals of VanIngen became general partners of Hill, Darlington entitled collectively to 50% of the profits and losses and 50% of the voting control. The taxpayer partnership subscribed to all of the voting stock of the corporation. The nonvoting stock and the five-year notes were subscribed to by some, but not all, of the old Hill, Darlington partners and some, but not all, of the VanIngen officers. The old Hill, Darlington partners held 66% of such securities for an investment of \$462,000.00.

5. Hill, Darlington bought and sold corporate securities entirely and did no business in municipal securities. Only 10% of its business involved underwriting. Its customers consisted almost exclusively of individuals.

6. VanIngen did all its business in municipal securities, 80% of which involved underwriting. About 95% of its customers were institutional investors.

7. From 1956 to 1960, VanIngen had eleven directors, six of whom were associated with the VanIngen interests. All officers of VanIngen were VanIngen people except for Peter Darlington and Henry Darlington, Jr., who were vice presidents. The compensation of the officers of VanIngen depended entirely on productivity. Activities performed for the partnership were not taken into account. No dividends were declared, but a substantial amount of the notes were paid off.

8. The compensation of the partners of Hill, Darlington was based entirely on productivity without regard to services performed for the corporation. Residual profits and losses were divided accordingly to the interest in the partnership. Two of the years, 1956 and 1957, resulted in residual losses for the partnership and net losses for the partners of the VanIngen group because of their lack of productivity as partners.

9. The offices of the two firms were adjacent. All activities of the two were kept separate. The staff, books, and cleaning functions were separate. They had different lawyers, accountants and banks. Each was operated in a way typical of its own line of business and in the way it had been operated prior to 1956.

10. The assessments are in the following amounts:

\$3,102.40 for 1956;	\$8,043.40 for 1958;
\$8,906.56 for 1957;	\$6,412.56 for 1959;

each with interest. Only part of these assessments are in issue.

CONCLUSIONS OF LAW

The business of the VanIngen corporation was different from the business of the partnership and the salaries received from the corporation are not part of the receipts of the partnership.

DETERMINATION

The applications are granted and, as the assessments have been paid, refunds are found to be due as follows:

\$2,982.40 for 1956;

\$8,746.56 for 1957;

\$7,521.67 for 1958;

\$6,086.09 for 1959.

DATED: Albany, New York

STATE TAX COMMISSION

March 17, 1972

Norman Gallivan

COMMISSIONER

Bruce Muncy

COMMISSIONER

Walter Koen

COMMISSIONER