

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

LIQUOR STORES SERVICE COMPANY
"1", "2" & "3"

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) 1962, 1963, 1964
& 1965

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

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 31st day of July, 1972, she served the within Notice of Decision (or Determination) by (certified) mail upon Liquor Stores Service Company "1", "2" (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Liquor Stores Service Company
"1", "2" & "3"
603 Main Street
Greenport, New York 11944
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

31st day of July, 1972

Lynn Wilson

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

LIQUOR STORES SERVICE COMPANY :
"1", "2" & "3" :

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) 1962, 1963, 1964 & 1965

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 31st day of July , 1972, she served the within
Notice of Decision (or Determination) by (certified) mail upon Stanley S. Corwin,
Esq.

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Stanley S. Corwin, Esq.
114 Main Street
Greenport, New York 11944

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

31st 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

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION

HEARING UNIT

EDWARD ROOK

SECRETARY TO
COMMISSION

STATE TAX COMMISSION

NORMAN F. GALLMAN, ACTING PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

ADDRESS YOUR REPLY TO

Dated: Albany, New York

July 31, 1972

Liquor Stores Service Company

"1", "2" & "3"

603 Main Street

Greenport, New York 11944

Gentlemen:

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,

Nigel G. Wright

Enc.

HEARING OFFICER

cc: Petitioner's Representative
Law Bureau

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
LIQUOR STORES SERVICE COMPANY	:	
"1", "2" & "3"	:	DECISION
for a Redetermination of a Deficiency	:	
or for Refund of Unincorporated Business	:	
Taxes under Article 23 of the Tax Law	:	
for the Years 1962 through 1965.	:	

Kathryn Claudio, Frank Claudio, Josephine Corwin and Stanley S. Corwin, individually and as co-partners d/b/u the firm name and style of Liquor Stores Service Company, "1", "2" & "3", filed a petition for a redetermination of a deficiency issued under date of April 14, 1967, in unincorporated business taxes under Article 23 of the Tax Law for the years 1962 through 1965.

A hearing was held on April 18, 1972, at the offices of the State Tax Commission, 80 Centre Street, New York City, before Nigel G. Wright, Hearing Officer. The petitioner was represented by Stanley S. Corwin, Esq. The Income Tax Bureau was represented by Saul Heckelman, Esq., appearing by Francis X. Boylan, Esq. The record of said hearing has been duly examined and considered.

ISSUES

The issues in this case are whether bookkeeping and clerical activities are professional so as to be exempt from tax and whether three allegedly separate partnerships are, in reality, one partnership for purposes of the tax.

FINDINGS OF FACT

1. Kathryn Claudio owned all of the stock of Claudio's Liquor Store in Greenport, Suffolk County, New York. This corporation contracted for clerical and bookkeeping services with certain

partnerships during the years 1962 through 1965. In 1962, it paid \$17,000.00 to one partnership. In 1963 and 1964, it paid \$18,500.00 in total to three partnerships. In 1965, it paid \$13,650.00 to one partnership.

2. Liquor Stores Service Company was formed on February 1, 1960, by Kathryn Claudio, Frank M. Claudio, Josephine Corwin, and Stanley S. Corwin. This was dissolved on January 1, 1962, and three of the partners, Kathryn Claudio, Frank M. Claudio and Josephine C. Corwin, formed a partnership to continue the business of the former partnership and to assume its name. This partnership contracted with the corporation to provide clerical and bookkeeping services for \$17,000.00 with that sum being divided between the three partners in stated portions. Similar services were provided in 1963 and 1964 for \$8,500.00 a year, and in 1965 for \$13,650.00. Over the four years the interests of the partners varied as follows: Kathryn Claudio, 40.1% in 1962; 40% in 1963 and 1964 and 42 6/7% in 1965; Frank Claudio, 45.9% in 1962, 40% in 1963 and 1964 and 42 6/7% in 1965; Josephine Corwin, 14% in 1962, 1963 and 1964 and 14 2/7% in 1965.

3. Liquor Stores Service Company, No. 2, was formed on January 1, 1963, by Kathryn Claudio, Frank M. Claudio and Stanley S. Corwin. There was no written agreement. This partnership provided clerical and bookkeeping services to the corporation in 1963 and 1964 for \$5,000.00 a year. The interests of the partners were the same for both years; Kathryn Claudio, 49%; Frank C. Claudio, 39% and Stanley S. Corwin, 12%.

4. Liquor Stores Service Company, No. 3, was formed on January 1, 1963, by Kathryn Claudio, Frank M. Claudio, Josephine C. Corwin and Stanley S. Corwin. The interests of the partners were the same for both years and were respectively 49%, 39%, 6% and 6%. This partnership provided clerical and bookkeeping services to the corporation in 1963 and 1964 for \$5,000.00 a year.

5. Considering the sums paid to all three partnerships, the

interests of each individual person therein are as follows:

Kathryn Claudio, a low in 1962 of 40.1% to a high in 1963, 1964 of 44.86%; Frank Claudio, a high in 1962 of 45.9% to a low in 1963, 1964 of 42.2% and for the Corwin's as a unit, a low in 1963, 1964 of 12.92%, to a high in 1965 of 14.2/7%. The greatest difference in interest between years was for Stanley S. Corwin considered alone, and that was zero in 1962 and 1965 and 4.86% in 1963 and 1964.

6. The services performed by the partnership were performed by the individual partners and were performed by them in the same ratio as their respective interests. The partnerships had no expenses. The clerical services performed consisted of waiting on customers and moving stock in the liquor store. The bookkeeping services consisted of taking cash register tapes, keeping day books and doing monthly write-ups of the liquor store's books. None of the partners were C.P.A.'s.

7. The deficiency notice finds that all three partnerships were one business and that the professional exemption is not allowable. Said deficiency is in the amount of \$1,364.80 plus \$214.27 interest for a total of \$1,579.07.

CONCLUSIONS OF LAW

The professional exemption does not apply. Clerical services are not professional and bookkeeping services especially when performed by a person not a C.P.A. are not professional. It was proper to tax the three partnerships as one partnership. The Commission need not reach the question of whether anyone or all of the partnerships were sham for all purposes or even for tax purposes alone. The provisions of section 708 of the Internal Revenue Code mandate a holding that the three partnerships were each merely a continuation of the one previously existing partnership and thus were themselves one partnership.

DECISION

The petition is denied and the deficiency is affirmed together with such further interest as may be due under section 684 of the Tax Law.

DATED: Albany, New York
July 31, 1972

STATE TAX COMMISSION

Norman Gallman

COMMISSIONER

Bruce Mouley

COMMISSIONER

Milton Krumm

COMMISSIONER