

**STATE OF NEW YORK
STATE TAX COMMISSION**

In the Matter of the Petition

of
CHARLES STERN, MAURICE S. BYCK, :
LOUIS STERN, et al., Individually and
as co-partners d/b/u the firm name: & style
For a Redetermination of a Deficiency or of
a Refund of Unincorporated Business: STERN & BYCK
Taxes under Article(s) 23 of the
Tax Law for the (Year(s) 1965 & 1966 :

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 29th day of August , 1972 , she served the within Notice of Decision (or Determination) by (certified) mail upon Stern Brothers

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

29th day of August , 1972.

Lynn Wilson

Martha Funn

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

CHARLES STERN, of MAURICE S. BYCK,
LOUIS STERN, et al., Individually and as
co-partners d/b/u the firm name & style of

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

STERN & BYCK
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:

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 29th day of August, 1972, she served the within
Notice of Decision (or Determination) by (certified) mail upon Sanford Becker, C.P.A.

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Sanford Becker, C.P.A.
1 East 42nd Street
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

29th day of August, 1972.

Lynn Wilson

Martha Funaro



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

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

Dated: Albany, New York

August 29, 1972

Stern Brothers
111 Broadway
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 **4 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

In the Matter of the Petition	:	
of	:	
CHARLES STERN, MAURICE S. BYCK,	:	
LOUIS STERN, et al.,	:	
Individually and as co-partners	:	
d/b/u the firm name and style of	:	DECISION
STERN & BYCK	:	
for a Redetermination of Deficiencies	:	
or for Refund of Unincorporated Business	:	
Taxes under Article 23 of the Tax Law	:	
for the Years 1965 and 1966.	:	

Charles Stern, Maurice S. Byck, Louis Stern, et al., individually and as co-partners d/b/u the firm name and style of Stern & Byck filed petitions for the redetermination of deficiencies in unincorporated business tax under Article 23 of the Tax Law for the years 1965 and 1966. A hearing was held on January 28, 1971, at the offices of the State Tax Commission, 80 Centre Street, New York City, before Nigel G. Wright, Hearing Officer. Sanford Becker, C.P.A. appeared for the petitioner and Edward H. Best, Esq. (Francis X. Boylan, Esq., of Counsel) appeared for the Income Tax Bureau. The record of said hearing has been duly examined and considered.

ISSUE

The issue in this case is whether certain guaranteed payments to former partners are to be included in income, considering section 706(3) of the Tax Law, for purposes of the unincorporated business tax.

FINDINGS OF FACT

1. The petitioners' firm operates as a specialist on the New York Stock Exchange. As of July 30, 1965, one general partner and two limited partners retired from the firm. At least one of them thereafter engaged in the securities business, although he did

not continue as a specialist.

2. Pursuant to agreement the retiring partners were to receive, after an audit, the book value of their capital accounts. This was specifically designated as a payment "intended to qualify under section 736(b) of the Internal Revenue Code". Such capital accounts did not, under the rules of the New York Stock Exchange, include any good will. These sums are not in issue here. In addition the retiring partners were to receive, in 32 equal quarterly installments, stipulated sums specifically designated as payments intended to qualify as "guaranteed payments under section 736(a) of the Internal Revenue". It is these sums which are in issue. The claims of the retiring partners to these payments were made subordinate to the claims of present and future creditors. Both the amounts paid for book value and as guaranteed payments were stated to be in liquidation of and in full satisfaction of the interest of the retiring partners in the partnership. The retiring partners left no capital in the firm and performed no services for it after retirement. The retiring partners did in fact receive these sums.

3. The deficiency notice for 1965 is dated February 19, 1968, and is in the amount of \$447.18 plus \$49.48 interest for a total of \$496.66. The deficiency notice for 1966 is dated November 24, 1969, and is in the amount of \$1,930.00 plus \$301.99 interest for a total of \$2,231.99.

CONCLUSIONS OF LAW

The amounts here in issue were designated on the petitioners' firm federal tax return as guaranteed payments as provided by sections 736(a)(2) and 707(c) of the Internal Revenue Code and were deducted as trade or business expenses on Schedule "J" of that return.

However, even if such amounts represent "an arrangement among the partners in the nature of mutual insurance" (see U.S. Treas. Reg. 1.736-1(a)(2)) still a deduction as an ordinary and business expense would seem to be justified only in view of services previously rendered to the firm by the "withdrawing partner" (Mertens, Law of Federal Income Taxation, Section 35.78). It can also be noted that under the Federal Law (U.S. Treas. Regs. 1.736-1(a)(1)(ii) and 1.771-1(d)) the retired partner is treated as a continuing partner until all payments due to him are received. In view of this, the amounts of the payments here in question cannot be allowed as a deduction on the New York return. The specific provisions of section 706(3) of the Tax Law provide that "No deduction shall be allowed! ...for amounts paid or incurred to a proprietor or partner for services or for use of capital".

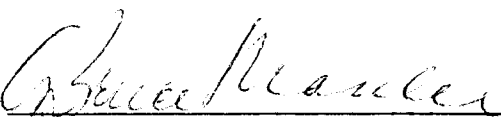
DECISION


The petition is denied and the deficiency is found correct and is due together with such further interest as is imposed under section 684 of the Tax Law.

DATED: Albany, New York
August 29, 1972

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER