

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

HANOVER MANAGEMENT COMPANY

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) 16-A of the
Tax Law for the (Year(s) Ending August: 31, 1953
through August 31, 1960.

State of New York
County of Albany

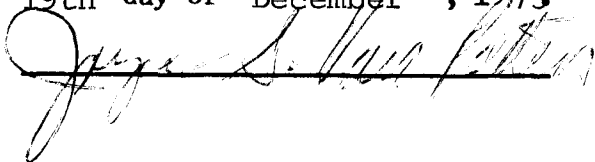
Martha Funaro , being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 19th day of December , 1973 , she served the within
Notice of Decision (or Determination) by (certified) mail upon Hanover Management
Company (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Hanover Management Company
569 Broadway
New York, New York

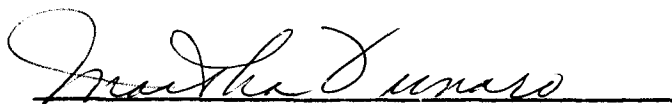
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Post Office Department within the State of New York.

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

19th day of December , 1973





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

HANOVER MANAGEMENT COMPANY

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) 16-A of the
Tax Law for the (Year(s) Ending August 31, 1953
through August 31, 1960.

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 19th day of December , 19 73, she served the within
Notice of Decision (or Determination) by (certified) mail upon Sidney Gelfand, 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: Sidney Gelfand, C.P.A.
136 East 57th Street
New York, New York 10022

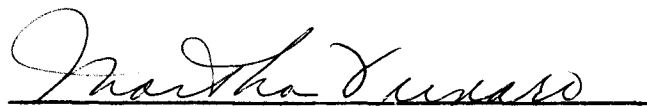
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Post Office Department within the State of New York.

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

19th day of December , 1973.





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

HANOVER MANAGEMENT COMPANY

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) 16-A of the
Tax Law for the (Year(s) Ending August: 31, 1953
through August 31, 1960.

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 19th day of December , 19 73, she served the within
Notice of Decision (or Determination) by (certified) mail upon David Falk

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

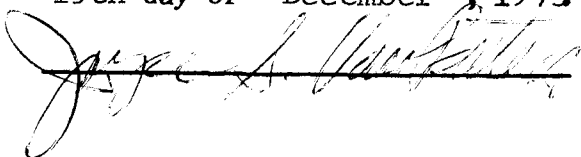
wrapper addressed as follows: Mr. David Falk
c/o Hanover Management Company
569 Broadway
New York, New York

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

19th day of December , 1973





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

HANOVER MANAGEMENT COMPANY

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) 16-A of the
Tax Law for the (Year(s) Ending August: 31, 1953
through August 31, 1960.

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 19th day of December , 1973, she served the within
Notice of Decision (or Determination) by (certified) mail upon Margaret Falk

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

wrapper addressed as follows: Mrs. Margaret Falk
c/o Hanover Management Company
569 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

19th day of December , 1973.

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

HANOVER MANAGEMENT COMPANY

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) 16-A of the
Tax Law for the (Year(s) Ending August 31, 1953
through August 31, 1960.

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 19th day of December , 1973, she served the within
Notice of Decision (or Determination) by (certified) mail upon Charles Falk

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

wrapper addressed as follows: Mr. Charles Falk
c/o Hanover Management Company
569 Broadway
New York, New York

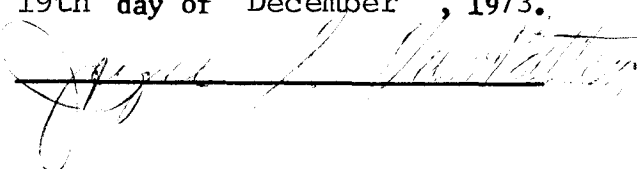
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Post Office Department within the State of New York.

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

19th day of December , 1973.





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

HANOVER MANAGEMENT COMPANY

For a Redetermination of a Deficiency or
a Refund of Unincorporated Business:
Taxes under Article(s) 16-A of the
Tax Law for the (Year(s) Ending August: 31, 1953
through August 31, 1960.

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 19th day of December , 1973 , she served the within
Notice of Decision (or Determination) by (certified) mail upon Charlotte Falk

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

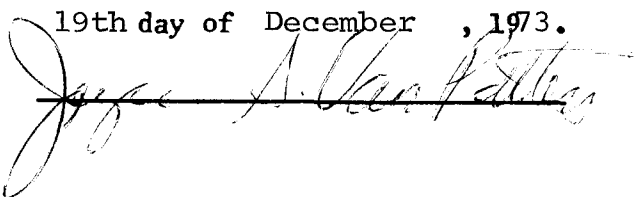
wrapper addressed as follows: Mrs. Charlotte Falk
c/o Hanover Management Company
569 Broadway
New York, New York

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

19th day of December , 1973.





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

HANOVER MANAGEMENT COMPANY

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) 16-A of the
Tax Law for the (Year(s) Ending August:31, 1953
through August 31, 1960.

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 19th day of December , 19 73, she served the within
Notice of Decision (or Determination) by (certified) mail upon Isidore Falk

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mrs. Isidore Falk
c/o Hanover Management Company
569 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

19th day of December , 1973.

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

HANOVER MANAGEMENT COMPANY

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) 16-A of the
Tax Law for the (Year(s) Ending August: 31, 1953
through August 31, 1960.

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 19th day of December , 19 73, she served the within
Notice of Decision (or Determination) by (certified) mail upon Anna Falk

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

wrapper addressed as follows: Mrs. Anna Falk
c/o Hanover Management Company
569 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

19th day of December , 1973.

Martha Funaro

James A. [Signature]



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
Mario A. Procaccino,
~~KORNAKXXXXXXXX~~ PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

ADDRESS YOUR REPLY TO

Dated: Albany, New York

December 19, 1973

Hanover Management Company
569 Broadway
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(s) **386j** of the Tax Law, any
proceeding in court to review an adverse deci-
sion must be commenced within **90 Days**
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

HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
HANOVER MANAGEMENT COMPANY	:	DETERMINATION
for Revision or Refund of Unincorporated	:	
Business Taxes under Article 16-A of the	:	
Tax Law for the fiscal years ending	:	
August 31, 1953 through August 31, 1960.	:	

David Falk, Margaret Falk, Charles Falk, Charlotte Falk, Isidore Falk, Anna Falk, et al., individually and as copartners d/b/u the firm name and style of Hanover Management Company filed applications pursuant to sections 386j and 374 of the Tax Law for revision of assessments issued for each fiscal year 1953 through 1955 and 1957 through 1960, and for refund for the fiscal year 1956 of unincorporated business taxes imposed under Article 16-A of the Tax Law. The assessment for 1953 was paid in June 1966. The assessments for the other years was paid on July 20, 1966. The amounts of refund in question are \$990.00 for each year 1953 and 1954, \$1,320.00 for each year 1955 through 1958, \$1,208.00 for 1959 and \$1,074.67 for 1960.

Said applications were denied on September 12, 1966, and hearings were demanded. A hearing was duly held on October 21, 1969, at the offices of the State Tax Commission, 80 Centre Street, New York City, before Nigel G. Wright, Hearing Officer. The applicant was represented by Sidney Gelfand, C.P.A.

The Income Tax Bureau was represented by Edward H. Best, Esq., appearing by Solomon Sies, Esq. The record of said hearing has been duly examined and considered.

ISSUE

The issue herein is whether the income of the applicant's business for purposes of the unincorporated business tax should include certain salaries received by the individual members of the firm from certain corporations related to the applicant.

FINDINGS OF FACT

1. The applicant, Hanover Management Company, is a partnership formed in 1945 by three brothers; Charles Falk, David Falk and Isidore Falk. Each brother together with his family held a one-third interest. However, the interest of each brother alone was: Charles Falk, 3/36, David Falk, 6/36, and Isidore Falk, 2/36. Including other family members there are a total of thirteen partners. The purpose of the partnership was to combine the interest of the three brothers and to distribute these interests among the families of the brothers. This purpose was recognized as valid by the Internal Revenue Service in 1953, subject to a limitation as to salaries to be drawn by the Falk brothers. The Federal Internal Revenue Service has agreed with the applicant that the applicant partnership would be recognized for the purpose of shifting income to lower bracket family members but that the income attributable to the direct services of each of the brothers should not be subject to such shifting. To accomplish this, each brother was assigned a "preferential draw" or "salary" to be paid by the applicant partnership before profits were distributed to all partners. These salaries were calculated on the basis of a value of services of each brother on a full-time basis of \$25,000.00 a year; and, accordingly, the salaries already received by each brother were credited against such sum.

2. The operations of the applicant involve both real estate and textiles. These operations have been described in part to be similar to those of a holding company. The applicant owns all of

the stock of Hanover Management Corporation which in turn owns stock in several corporations each owning investment real estate. Both the Hanover Management Corporation and the applicant manages the real estate owned by the separate corporations and receive management fees for their services. The applicant also owns all of the stock of Milo Textile Corporation which engaged in the manufacturer of textiles. The selling for Milo Textile is done by a partnership, the Milo Mills Company, which in all pertinent respects is identical with and the alter ego of the applicant firm.

The applicant had interest in other firms including the Easterly Co. Ltd. and the Westerly Co. Ltd. and Chestertown Mills, Inc. The first two are not pertinent to this proceeding. The last, Chestertown Mills, Inc. is apparently a successor in interest to the assets of Milo Textile and will be treated as such.

3. The applicant filed returns for unincorporated business tax. The income and expenses of Milo Mills Company was combined with applicant's income and expenses for the purpose, though for Federal income tax purposes, they had filed separate partnership returns.

4. The Falk brothers received certain salaries, which are here in question, from the Hanover Management Corporation and by the Milo Textile Corporation. For the years 1953 through 1958, these salaries were \$12,000.00 each to Charles and Isidore Falk and \$9,000.00 to David Falk for a total of \$33,000.00. For 1959, the salaries were \$10,600.00 each to Charles and Isidore Falk and \$9,000.00 to David Falk for a total of \$30,200.00. For 1960, the individual breakdown is not available but the total was \$26,866.66.

5. The Falk brothers also received certain other salaries. These were paid by the applicant either in its own name or in the name of the Milo Mills Company. These are not directly in issue since they are added back to the income of the applicant for

purposes of the unincorporated business tax, though not for the personal income tax. However, they are related to the salaries which are in issue.

The salaries paid in the name of Milo Mills were \$10,000.00 each to Charles and Isidore Falk. The salaries paid in the name of the applicant were calculated with reference to all other salaries paid and were set at a sum so that each brother was credited with a total salary of \$25,000.00 in each year. For the years 1953 through 1958, these salaries amounted to \$3,000.00 each to Charles and Isidore Falk and \$16,000.00 to David Falk.

6(a). The salary structure during the years 1953 through 1958 was follows:

	<u>Charles Falk</u>	<u>David Falk</u>	<u>Isidore Falk</u>
Hanover Mgmt. Corp.		\$9,000.00	
Milo Textile Corp.	\$12,000.00		\$12,000.00
Milo Mills Company	10,000.00		10,000.00
Balance from applicant	<u>3,000.00</u>	<u>16,000.00</u>	<u>3,000.00</u>
TOTAL	\$25,000.00	\$25,000.00	\$25,000.00

6(b). During 1959, the \$12,000.00 paid Charles and Isidore Falk by Milo Textile Corporation was replaced by \$10,600.00 paid to each by Chestertown Mills, Inc. During 1960, the exact breakdown of salaries is not determinable from the record but presumably is about the same as in previous years.

7(a). The applicant partnership was formed in 1945, by the contribution to it of all of the stock in the Hanover Management Corporation by the Falk brothers. In 1952, the applicant acquired from the Falk brothers their 100% ownership interests in the Milo Mills Company which thereafter was operated as a "subsidiary" of the applicant firm. Also, at or around 1952, the applicant became owner of the entire capital stock of the Milo Textile Corporation.

7(b). Hanover Management Corporation was formed in 1937 or 1938. The Falk brothers bought out outside interests before 1944. In 1945, the Falk brothers contributed their stock to the Hanover Management Company, a partnership composed of the three brothers. The business of the corporation was investing in real estate, mainly apartment houses, each property of which was generally separately incorporated. It also managed the real estate owned by these separate corporations. It did no business for anyone else. David Falk received a salary of \$9,000.00 a year from the corporation for his services. The corporation withheld taxes and social security from such salary.

7(c). Milo Mills is a partnership formed originally in 1933 by Isidore Falk and Milo Dornbush. By 1952, the three Falk brothers each held a two-ninths interest and Milo Dornbush held a one-third interest. In 1952, Milo Dornbush's interest was bought out completely by Hanover Management Company and the brothers contributed their partnership interest to Hanover Management Company. Milo Mills originally manufactured and sold knit goods but the manufacturing business was transferred to Milo Textile Corporation and Milo Mills became only a selling agent for Milo Textile Corporation. In the years in question, 1953 through 1960, Milo Mills and Hanover Management combined their income and expenses for New York unincorporated business tax purposes but filed separate Federal partnership returns. Isidore Falk and Charles Falk drew \$10,000.00 a year each from Milo Mills. Isidore Falk did the selling for the business.

7(d). Milo Textile Corporation was formed in 1939 or 1940. It was a manufacturer of hair nets and knitted products, all of which was sold through Milo Mills Company. The Falk brothers contributed their interest in the corporation to the taxpayer partnership. Until 1952, Milo Dornbush had an interest in this business, but he was bought out on March 1, 1952, by Hanover Management Company. From 1953 to 1956, it had offices at 569 Broadway,

Manhattan, and since then has sole offices in Canarsie, Brooklyn. Charles Falk is the production director and Isidore Falk does the buying for the business. Each receives \$12,000.00 a year in salary from which taxes and social security are withheld.

8. The taxpayer partnership and the related business have their offices on the fourth floor of the buildings at 569 Broadway, Manhattan. The textile interests, Milo Mills and Milo Textiles, have their offices on one part of the floor and the real estate interests, Hanover Management Corporation and Hanover Management Company, have its offices on another part of the floor. The real estate interests were under the supervision of David Falk. They have a common telephone and each division pays its own share of the bill. Each of these two separate interests had its own employees and kept its own books.

9. The salaries paid by the corporation were subject to withholding and were for services actually rendered. They had been paid by the corporations for periods of time long antedating the formation of the applicant partnership. The salaries received by each brother were retained by him and did not benefit the other brothers.

10. The corporations had each paid a franchise tax under Article 9-A of the Tax Law. The corporations had paid no dividends over the years. However, no allegation has been made that the modest salaries here in issue are disguised dividends.

11. Except for major policy decisions, David Falk confined his activities to the real estate operations of both the applicant and the Hanover Management Corporation. His only salaries were from those two sources. Likewise, Charles and Isidore Falk each confined their activities to the textile side of the business. Each received a salary from Milo Mills and from Milo Textile Corporation plus a "differential" from the applicant firm, with Charles Falk being in charge of production for the Milo Textile Corporation and Isidore Falk being the purchaser for Milo Textile and the salesman for Milo Mills. What Charles Falk does for Milo Mills does not appear in the record.

CONCLUSIONS OF LAW

The salaries received by David and Isidore Falk were for services which were similar in nature to the services performed by the applicant partnership and such salaries must be regarded as part of partnership income. David Falk managed real estate for both the applicant and the Hanover Management Corporation. Isidore Falk bought and sold textiles for both the applicant, under the name of Milo Mills, and for the Milo Textile Corporation. The services performed by Charles Falk as a production man for Milo Textile Corporation appear to be unrelated to any services performed by the applicant and his salary can be excluded from the applicant's income.

DATED: Albany, New York
December 19, 1973

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER