

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

F. EBERSTADT and Co.

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) 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 23rd day of July , 1974, she served the within
Notice of Decision (or Determination) by (certified) mail upon F. Eberstadt and Co.

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: F. Eberstadt and Co.

65 Broadway
New York, New York 10006

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

23rd day of July , 1974

Janet Mack

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

F. EBERSTADT AND CO.

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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) 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 23rd day of July , 19 74, she served the within Notice of Decision (or Determination) by (certified) mail upon J. Edward Shillingburg, Esq. (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: J. Edward Shillingburg, Esq.
c/o Lord, Day & Lord
25 Broadway
New York, New York 10004
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

23rd day of July , 1974

Janet Mack

Martha Funaro



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

STATE TAX COMMISSION

MARIO A. PROCACCINO, PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

BUILDING 9, ROOM 214-A
STATE CAMPUS
ALBANY, N.Y. 12227

AREA CODE 518

ADDRESS YOUR REPLY TO

MR. WRIGHT 457-2655
MR. LEISNER 457-2657
MR. COBURN 457-2896

Dated: Albany, New York

July 23, 1974

**F. Eberstadt and Co.
65 Broadway
New York, New York 10006**

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

HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

AD-1.12 (8/73)

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
F. EBERSTADT and CO.	:	DECISION
for a Redetermination of a Deficiency	:	
or for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law for	:	
the Years 1964 and 1965.	:	

F. Eberstadt and Co. filed a petition under sections 722 and 689 of the Tax Law for the redetermination of a deficiency issued in January 26, 1970, in the amount of \$20,883.45 plus interest of \$5,280.05 for a total of \$26,163.50 for unincorporated business tax under Article 23 of the Tax Law for the years 1964 and 1965.

A hearing was duly held on May 30, 1973, at the offices of the State Tax Commission, 80 Centre Street, New York City, before Nigel G. Wright, Hearing Officer. Petitioner was represented by J. Edward Shillingburg, Esq., of Lord, Day & Lord. 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.

ISSUE

The issue in this case is whether the income of the petitioner, a partnership, should include, for purposes of the unincorporated business income tax, certain salaries received by some of its partners for duties as officers of a related corporation.

FINDINGS OF FACT

1. F. Eberstadt and Co., the petitioner herein, is a limited partnership with offices at 65 Broadway, New York City, conducting a general investment banking and securities business that included

the underwriting and public distribution of securities and direct placement of new corporate issues with institutional lenders. This business was principally with institutional customers. Petitioner had about thirty employees who worked full time on partnership activities. The partnership was managed by a policy and operating committee.

2. The petitioner in 1938 had founded the Chemical Fund, Inc. The Chemical Fund, Inc. is a mutual fund - an open end investment company - subject to the Investment Company Act of 1940. Such a fund is owned by its investors which, in the case of the Chemical Fund, Inc., numbered about 60,000 in 1965. The fund has its own fourteen-man board of directors; ten of these directors were individuals other than members or employees of the partnership.

3. F. Eberstadt and Co., Managers & Distributors, Inc., (hereinafter referred to as "M & D") is the investment advisor and exclusive distributor for Chemical Fund, Inc. It was formed in 1954 to take over these functions from the petitioner which had managed the mutual fund as a department of its own business. During 1954, "M & D" was incorporated for good business and financial reasons including the limitation of legal liability and the preparation of adequate financial statements. All of its stock is owned by the petitioner. During 1964 and 1965, its offices were at 65 Broadway, New York City. It had approximately fifty-five employees.

4. The relationship between "M & D" and the Chemical Fund, Inc. in 1964 and 1965 was controlled by a management agreement and a distribution agreement, both executed in conformity with section 15 of the Investment Company Act of 1940. The income

of "M & D" was solely from a net sales commission on the distribution of Chemical Fund stock and a management fee computed as a small percentage of the Fund's average daily net assets. "M & D" was engaged in the distribution and redemption of the shares of the Chemical Fund with the public at large. (Its own securities orders were placed with brokers other than the petitioner.) Part of its income was specifically for investment advice given to the Chemical Fund.

5. Though both the petitioner and "M & D" had the same street address, their personnel were grouped separately. The rent, telephone and other expenses and the payroll of both petitioner and "M & D" were paid entirely by "M & D". However, "M & D" was reimbursed by petitioner for the services and payroll attributable to itself.

6. Petitioner and "M & D" each had its own staff of research analysts which worked exclusively on its own investments.

7. Petitioner handled securities orders for, generally large institutional investors. It participated in the underwriting of security issues and in general financial services connected with mergers and other financial reorganizations.

8. The petitioner itself had no agreements to manage or distribute for any mutual fund and any such activities by petitioner or the receipt of fees for such activities by petitioner would have been illegal and void.

9. Petitioner had about ten partners in 1964 and about fifteen by the end of 1965; their respective profit and loss percentage interests varied from about 3% to 20%. In addition, each partner received a salary which was accounted for as an expense before the computation of distributable profits. Such

salary was normally about \$20,000.00 and had no relation to the partner's interest in the firm. Some salaries were paid for services to the petitioner itself but other salaries were paid for services to "M & D". Each salary, however, was attributed to the business firm for which the partner actually worked.

10. The partnership's reported income includes only the dividends declared by "M & D". Such dividends were substantial for the years in question. The partnership's assets includes the book value of the "M & D" stock which is taken into account, however, only when a partner is withdrawing from the firm. No consideration is given to the excess, if any, of the market value of the "M & D" stock, over its book value. Such excess value would in all probability accrue to the benefit of the Chemical Fund share holders and not to petitioner.

11. "M & D" paid franchise taxes to New York State under Article 9-A of the Tax Law in excess of \$20,000.00 for each of the years in question.

12. The salaries paid by "M & D" to persons who were partners of the petitioner were computed on audit to be \$226,536.99 in 1964 and \$295,549.42 in 1965. However, it is now asserted by petitioner, and not contested by the Income Tax Bureau, that some of these amounts were paid for services of persons who were not partners when the services were performed although they became partners thereafter. These amounts are \$26,500.04 in 1964 and \$24,500.04 in 1965. The correct salaries paid are therefore \$200,039.95 in 1964 and \$271,049.38 in 1965. Of these amounts the salaries attributable to services performed for "M & D" amount to \$84,936.31 for 1964 and \$96,572.01 for 1965. These are the amounts here in issue. The remaining amounts of \$115,100.64 for 1964 and \$174,477.37 for 1965 had been charged

to petitioner itself. Since petitioner had deducted such salaries along with other expenses and a deduction for salaries paid to partners is not allowed under this tax, petitioner now concedes that such amounts were correctly added to income and are not contested.

CONCLUSIONS OF LAW


The salaries received by the members of the petitioner's firm for services rendered to the related corporation are not to be attributed to the petitioner. The salaries in issue are paid for actual services. Such services are of a different type than the services of the partnership itself. They are not integrated, interrelated or connected with the business of the partnership within the meaning and intent of section 703(b) of the Tax Law. See Petition of William Bresler, CCH New York State Tax Rep. ¶99-020; Petition of Librik Bros., CCH New York State Tax Rep. ¶99-030; Petition of Max Orda, CCH New York State Tax Rep., ¶99-744.

DECISION

The deficiency in issue is erroneous in part and is recomputed to be \$11,583.11 plus \$2,903.29 interest for a total of \$14,486.40. Such sum is due together with such further interest as shall be computed under section 684 of the Tax Law.

DATED: Albany, New York
July 23, 1974

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER