

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

S. E. NICHOLS 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) 23 of the
Tax Law for the ~~(Year(s))~~ F/Y/E January 31,
1961, January 31, 1962, January 31, 1963,
& January 31, 1964.

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 January, 1974, she served the within
Notice of Decision (or Determination) by (certified) mail upon S. E. NICHOLS
COMPANY (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows:

S. E. Nichols Company
500 Eighth Avenue
New York, New York 10018

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 January, 1974.

James S. Van Latten

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

S. E. NICHOLS COMPANY

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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)~~ F/Y/E January 31,
1961, January 31, 1962, January 31, 1963,
& January 31, 1964.

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 January, 1974, she served the within
Notice of Decision (or Determination) by (certified) mail upon JOSEPH J.
BLOOM, 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:

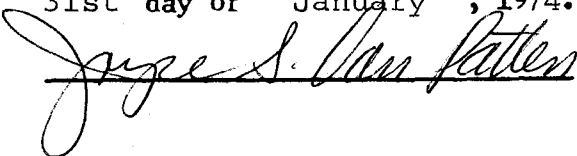
Joseph J. Bloom, C.P.A.
330 West 34th Street
New York, New York 10001

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 January, 1974.


Joseph S. Van Patten


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

~~MARIO A. PROCACCINO~~
~~PRESIDENT~~

A. BRUCE MANLEY

MILTON KOERNER

ADDRESS YOUR REPLY TO

DATED: Albany, New York
January 31, 1974

S. E. Nichols Company
500 Eighth Avenue
New York, New York 10018

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,


Paul B. Coburn
HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
S. E. NICHOLS COMPANY	:	DECISION
for Redetermination of Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law	:	
for the Fiscal Years Ending January 31,	:	
1961, January 31, 1962, January 31, 1963,	:	
and January 31, 1964.	:	

Petitioner, S. E. Nichols Company, has filed a petition for redetermination of deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the fiscal years ending January 31, 1961, January 31, 1962, January 31, 1963 and January 31, 1964. (File No. P6115074). A formal hearing was scheduled before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York, for July 15, 1971, at 10:45 A.M. Prior to the formal hearing, petitioner advised the State Tax Commission, in writing, on July 7, 1971, that it desired to waive a formal hearing and submit the case to the State Tax Commission on the entire record contained in the file.

ISSUE

Are salaries paid to partners by wholly owned corporations of petitioner, S. E. Nichols Company, considered partnership income subject to the unincorporated business tax?

FINDINGS OF FACT

1. Petitioner, S. E. Nichols Company, filed New York State income tax and unincorporated business tax returns for the years

ending January 31, 1961, January 31, 1962, January 31, 1963 and January 31, 1964. It did not include as income, subject to unincorporated business tax, salaries paid to the partners by fifteen wholly owned corporate subsidiaries of the partnership.

2. On February 19, 1968, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, S. E. Nichols Company, imposing unincorporated business tax for the years ending January 31, 1961 through January 31, 1964, upon the salaries paid to its four partners by fifteen wholly owned corporate subsidiaries of the partnership. Accordingly, a Notice of Deficiency was issued in the sum of \$7,693.95.

3. Petitioner, S. E. Nichols Company, was a partnership owning the entire capital stock of numerous corporations, as well as having a majority interest in others. Each of the corporations is a retail department store. The functions of the partnership was to do all of the purchasing, management, financing and record keeping for the corporations.

4. Relative to the total expenses incurred, petitioner, S. E. Nichols Company, did not allocate the total expenses incurred to any of the respective corporations in any fixed manner. Rather it applied the total expenses incurred as an offset against a four percent commission on sales received from the majority owned corporations. It then applied any unabsorbed balance as a reimbursable expense to the wholly owned corporations from which it received a commission of one percent of sales.

5. In years prior to the fiscal year ending January 31, 1961, included in amounts received from wholly owned corporations, was an

additional amount representing fees paid to petitioner, S. E. Nichols Company, and paid to partners as salaries for management services rendered to the corporations by the partnership.

6. On the tax return of petitioner, S. E. Nichols Company, for the fiscal year ending January 31, 1960, the distribution schedule disclosed salaries paid and distribution of profits.

7. A change in the method of reimbursement of management fees occurred as of February 1, 1960. Each of the partners was placed on the payroll of a specific wholly owned corporation as of that date. Although a partner received a "salary" from a specific corporation as a corporate officer, he continued to perform the very same functions for all corporations in the like manner as in previous years. The partnership no longer received an amount for management fees which was equal to the amount specified as partners' salaries since that date. The corporation which paid a partner's salary was allocated a lesser amount of the expenses incurred by the partnership on behalf of all corporations.

8. The total of officers' salaries and reduced reimbursement of expenses incurred by the corporations totaled an amount equivalent to amounts paid by other wholly owned corporations.

9. By totaling both "officers' salaries" and fees received above the total income of the partnership was placed on par with the total income received prior to February 1, 1960.

10. Each of the four partners continued to operate from the offices of the partnership performing the same functions for all the corporate entities as they did prior to their assignments as corporate officers.

CONCLUSIONS OF LAW

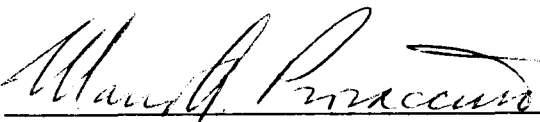
A. That the operations of petitioner, S. E. Nichols Company, had no new business or corporate purpose since there was no real reorganizations. It was a device which put on the form of a corporate reorganization as a disguise for concealing its real character.

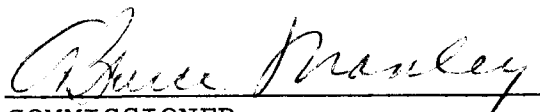
B. That accordingly, salaries paid to "corporate officers" are deemed to be management fees received by petitioner, S. E. Nichols Company, and that paid salaries are deemed to be the nature of partnership distribution of profits rather than employee salaries earned by them as individuals.

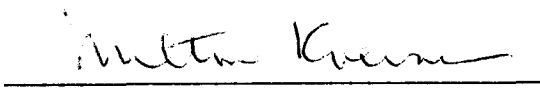
C. That the petition of S. E. Nichols Company is denied and the Notice of Deficiency issued February 19, 1968, is sustained.

DATED: Albany, New York
January 31, 1974

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER