

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ERNEST GOTTLIEB, ERNEST ASH and JOHN W. RENDOM, AFFIDAVIT OF MAILING
Individually and as copartners d/b/u the firm name OF NOTICE OF DECISION
and style of ERNEST GOTTLIEB & CO. BY (CERTIFIED) MAIL

For a Redetermination of a Deficiency or
a Refund of Unincorporated Business :
Taxes under Article (X) 23 of the
Tax Law for the ~~XXXXXX~~ Period :
December 1, 1966 through April 30, 1967.

State of New York
County of Albany

JANET MACK, 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 22nd day of December, 1975, she served the within
Notice of Decision ~~(XXXXXX)~~ by (certified) mail upon ERNEST GOTTLIEB & CO.

~~(XXXXXX)~~ the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Ernest Gottlieb & Co.
c/o Ernest Gottlieb
875 Park Avenue
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 ~~XXXXXX~~
~~XX~~ petitioner herein and that the address set forth on said wrapper is the last
known address of the ~~XXXXXX~~ petitioner.

Sworn to before me this

22nd day of December, 1975

Mary Jeff

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ERNEST GOTTLIEB, ERNEST ASH and JOHN W. RENDOM, AFFIDAVIT OF MAILING
Individually and as copartners d/b/u the firm name OF NOTICE OF DECISION
and style of ERNEST GOTTLIEB & CO. : BY (CERTIFIED) MAIL

For a Redetermination of a Deficiency or
a Refund of Unincorporated Business :
Taxes under Article (X) 23 of the
Tax Law for the ~~XXXXX~~ Period :
December 1, 1966 through April 30, 1967.

State of New York
County of Albany

JANET MACK , 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 22nd day of December , 1975, she served the within
Notice of Decision (~~XXXXXXXXXXXX~~) by (certified) mail upon CORNELIUS D.

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

wrapper addressed as follows: Cornelius D. Murray, Esq.
O'Connell and Aronowitz, P.C.
100 State Street
Albany, New York 12207

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

22nd day of December , 1975.

Mary Giff

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION
HEARING UNIT

PAUL GREENBERG
SECRETARY TO
COMMISSION

STATE TAX COMMISSION
JAMES H. TULLY, JR., PRESIDENT
MILTON KOERNER

BUILDING 9, ROOM 107
STATE CAMPUS
ALBANY, N.Y. 12227
AREA CODE 518

ADDRESS YOUR REPLY TO
Mr. Wright
Mr. Leisner
Mr. Coburn
(518) 457-3850

DATED: Albany, New York
December 22, 1975

Ernest Gottlieb & Co.
c/o Ernest Gottlieb
875 Park Avenue
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(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 E. COBURN
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	:	
ERNEST GOTTLIEB, ERNEST ASH and JOHN W.	:	
RENDOM, Individually and as copartners	:	
d/b/u the firm name and style of:	:	
ERNEST GOTTLIEB & CO.	:	DECISION
for a Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business Tax	:	
under Article 23 of the Tax Law for the	:	
Period December 1, 1966 through April 30,	:	
1967.	:	

Ernest Gottlieb, Ernest Ash and John W. Rendom, individually and as copartners d/b/u the firm name and style of Ernest Gottlieb & Co., filed a petition under sections 722 and 689 of the Tax Law for a refund of \$8,055.90 of unincorporated business taxes and interest paid on December 31, 1969, pursuant to a deficiency notice for that amount for unincorporated business taxes and interest under Article 23 of the Tax Law for the period December 1, 1966 through April 30, 1967.

A hearing was held on March 20, 1973, at the offices of the State Tax Commission, Building #9, State Office Building, Campus, Albany, New York, before Nigel G. Wright, Hearing Officer. The petitioner was represented by Cornelius D. Murray, Esq., of O'Connell & Aronowitz. 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 proceeds of the sale of a membership on the New York State Exchange are to be considered the income of a partnership for purposes of the unincorporated business tax rather than the income only of a single partner when the sale of the membership was made by the individual partner after the dissolution of the partnership.

FINDINGS OF FACT

1. Ernest Gottlieb & Co. of 61 Broadway, New York City, was formed by an agreement dated November 30, 1950, to do business as a securities broker and dealer. It dissolved effective December 31, 1966.

2. Ernest Gottlieb, individually, had purchased a membership ("seat") on the New York Stock Exchange on November 30, 1950. Between that date and December 31, 1966, he was the principal partner in the firm of Ernest Gottlieb & Co. During such time and pursuant to the partnership agreement, the seat was used by the firm and the commission income generated by the seat was considered firm income and the firm paid tax thereon. In 1967, petitioner did not use the seat for any purpose whatever, either for the partnership or himself. Petitioner sold that seat on February 16, 1967, realizing a substantial gain thereon. Said gain was declared on his Federal income tax return and New York personal income tax return. The amount of said gain is not in dispute.

3. The partnership filed a short period return for both Federal and State purposes for the period December 1, 1966 to April 30, 1967, but did not include the gain realized on the sale of the stock exchange seat.

4. Although it is asserted in the record that the partnership dissolved as of December 30, 1966, the partnership return claims charitable deductions made as late as January 20, 1967.

5. On November 29, 1968, the Income Tax Bureau issued a Statement of Audit Changes against the partnership based upon the unreported gain from the sale of the seat. The tax was paid and taxpayer timely filed a demand for refund which was rejected and petitioner timely filed a petition for a hearing on May 8, 1971.

6. Ernest Gottlieb, Ernest Ash and John W. Rendom, respectively, had shares in the partnership as follows: of profits, 60%, 30% and 10%; of losses and of the capital account, $66 \frac{2}{3}\%$, $33 \frac{1}{3}\%$ and none. Only Gottlieb and Ash had contributed capital to the firm. They were paid interest of 5% on their contribution. The nature of assets contributed does not appear in the record. Rendom was guaranteed a small salary before any division of profits.

7. The partnership agreement provided that Gottlieb "specifically agreed to contribute and does contribute to the partnership. . .the use of his membership on the New York Stock Exchange without charge retaining ownership thereof. . .(He) further specifically agrees that he will not dispose of the membership during the term of the partnership and that, insofar as may be necessary for the protection of creditors of the said partnership . . . and subject to the Constitution and Rules of the New York Stock Exchange, the proceeds of the sale of his membership shall be an asset of the said partnership . . ." It further provided that the partnership would pay the membership dues as a business expense. This provision met the requirements of section 314.20 of the Rules of the New York Stock Exchange of which petitioner, of course, was a member.

CONCLUSIONS OF LAW

A. A seat on a stock exchange contributed under the above conditions to a business as a stock brokerage and dealer is a partnership asset.

Freiday and Co., decision of State Tax Commission, December 1, 1972;

Gregory and Sons, decision of State Tax Commission, June 19, 1972.

B. A business continues until its assets are liquidated or, at least, converted to another use such as investment. Tax Law §703(a). See also People ex rel Harold M. Cone v. Graves et al, 254 App. Div. 918 (3rd Dept., June 1933).

C. The seat on the stock exchange here considered was an asset of the partnership and the gain on its sale is includable in its income for unincorporated business tax purposes for the year in question.


D. Moreover, the petitioner has not born the burden of proving that it terminated prior to the date of the sale, its own return showing otherwise.

E. The petition for refund is denied.

DATED: Albany, New York
December 22, 1975

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER