

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
David Merrick, R & M Company, Champion-Five Inc., et al **AFFIDAVIT OF MAILING**
Individually and as Co-Partners d/b/a the Firm Name and Style of DOLLY COMPANY

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund
of Unincorporated Business Tax :
Taxes under Article(s) 23 of the
Tax Law for the Year(s) or Period(s) 1965 :
1966 and 1967

State of New York
County of

MARYLOU SAMUELS

, 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 November, 1976, she served the within

NOTICE OF DECISION by (certified) mail upon Dolly Company

(representative of) the petitioner in the within proceeding,
XXXXXXXXXXXXXXXXXXXX

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed

as follows:

Dolly Company
246 West 44th 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 Postal Service within the State of New York.

That deponent further says that the said addressee is the (representative
of the) petitioner herein and that the address set forth on said wrapper is the
last known address of the (representative of the) petitioner.
XXXXX

Sworn to before me this

22nd day of November, 1976.

Marylou Samuels

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

David Merrick, R & M Company, Champion-Five Inc., et al, **AFFIDAVIT OF MAILING**
Individually and as Co-Partners d/b/s the Firm Name and Style of DOLLY COMPANY

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Unincorporated Business Tax :
Taxes under Article(s) 23 of the :
Tax Law for the Year(s) or Period(s) 1965 :
1966 and 1967

State of New York
County of

MARYLOU SAMUELS, 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 November, 1976, she served the within
Notice of Decision by (certified) mail upon Murray Frank
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Murray Frank, Esq.
1501 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 Postal Service within the State of New York.

That deponent further says that the said addressee is the (representative
of the) 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 November, 1976.

Janet Brack

Marylou Samuels



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N.Y. 12227

ADDRESS YOUR REPLY TO

TELEPHONE: (518) **457-3850**

November 22, 1976

Dolly Company
246 W. 44th Street
New York, New York 10036

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.

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. They
will be referred to the proper party for reply.

Very truly yours,

PAUL B. COBURN
Supervising Tax
Hearing Officer

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
David Merrick, R & M Company	:	
Champion-Five Inc., et al.,	:	
Individually and as Co-Partners	:	
d/b/a the Firm Name and Style of	:	DECISION
DOLLY COMPANY	:	
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law for	:	
the Years 1965, 1966 and 1967.	:	

Petitioners, David Merrick, R & M Company, Champion-Five Inc., et al., individually and as co-partners d/b/a the firm name and style of Dolly Company, 246 West 44th Street, New York, New York, filed a petition for the redetermination of a deficiency in unincorporated business tax under Article 23 of the Tax Law for the years 1965, 1966 and 1967. Said deficiency was asserted by notice issued on February 28, 1972, (under valid consents fixing the statute of limitations) and is in the amount of \$31,048.17, plus interest of \$9,607.10 for a total of \$40,655.27.

A hearing was duly held on May 22, 1974 at 2:10 P.M. at the offices of the State Tax Commission, Two World Trade Center, New York, New York, before Nigel G. Wright, Hearing Officer. The petitioner

(2)

appeared by Murray Frank, C.P.A. and Zev Friedman, C.P.A. The Income Tax Bureau appeared by Saul Heckelman, Esq., (Solomon Sies, Esq., of counsel).

The record of said hearing has been duly examined and considered.

ISSUES

I. Whether the petitioner is entitled on its New York partnership return to a deduction for depreciation, when the basis of the property being depreciated has been determined under the elective provisions of Section 754 of the Internal Revenue code, and alternatively;

II. Whether the petitioner, a partnership, is entitled to an "additional exemption" under Section 709(2) of the Tax Law for income distributed to a partner which itself is subject to tax.

FINDINGS OF FACT

1. Dolly Company, the petitioner herein, was a limited partnership that produced the Broadway show "Hello Dolly".

2. During 1965 David Merrick, a general partner of Dolly Company, sold a 40.00118% interest in the Dolly Company to a purchaser, the R & M Company, which itself became a general partner. Mr. Merrick received \$2,250,000.00 for this partial interest. Mr. Merrick retained an interest of 3.94075% in the partnership.

3. The Dolly Company, for Federal tax purposes, elected

(3)

under Section 754 of the Internal Revenue Code to adjust the cost basis of its assets upward by the amount of \$2,250,000.00. This was done by creating a new asset account denominated "capitalized expenses", in the amount of \$2,250,000.00.

4. The total amount of the capitalized expense account was amortized over a three-year period in the amounts of \$608,595.05 for 1965, \$999,614.19 for 1966 and \$645,791.00 for 1967. This was taken as an "other deduction" on the Federal partnership return and thus reduced the ordinary income reported on such return. On the New York partnership return (form IT-204) these amounts were allocated to New York state in the amounts of \$333,401.64, 333,147.86 and \$109,655.00 respectively. These are the amounts which have been added back to petitioner's income under the deficiency notice and are in issue herein.

5. As between the partners of Dolly Company, the amortization deduction on the books of Dolly Company was treated as applicable solely to the distributive share for tax purposes of R & M Company. Thus R & M Company would report on its tax returns no distributive share of income received from Dolly Company. The remaining partners of Dolly Company would report amounts of distributive share greater than would have been reported if the amortization deduction had been prorated by their proportionate interests in the partnership.

(4)

6. R. & M Company filed New York partnership returns for 1965 and 1966. These show an address in Beverly Hills, California. Both returns show no income and no deductions. A 1967 return was filed, prepared by a different accountant, showing income and deductions derived completely from the Dolly Company partnership. This claimed a New York allocation ratio of 16.746% and showed its only address to be in Las Vegas, Nevada. It is asserted and not contested that the New York allocation ratio of R & M Company is in every year the same as the New York allocation ratio of Dolly Company.

CONCLUSIONS OF LAW

A. That the deduction for depreciation must be disallowed, so far as it is determined by reference to a basis adjustment computed under the elective provisions of Section 743 and 754 of the Internal Revenue Code. The Commission will follow the ruling of its former counsel that while such basis adjustment may be applicable to the depreciation allowable to the transferee partner, it does not apply to the depreciation claimed on the books of the partnership (see Ruling of Counsel February 9, 1967).

B. That the additional exemption provided by Section 709(2) of the Tax Law must be denied. This exemption is limited to the amounts which would be included in the New York taxable income

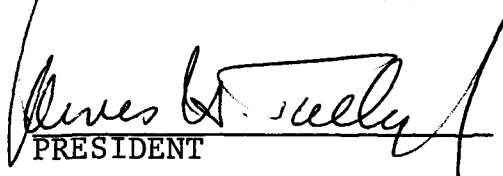
(5)

of R & M Co. Since R & M Co. had no office in New York, it was not subject to New York taxes in the years in question and any taxes paid must be ignored for purposes of this exemption.

C. That the deficiency under review is correct and the amount thereof is due together with such further interest as shall be computed under Section 684 of the Tax Law.

DATED: Albany, New York
November 22, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER