

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

EAGAN & GRIFFIN

c/o Joseph C. Eagan

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Unincorporated Business :
Taxes under Article(s) 23 of the :
Tax Law for the ~~Year(s) or~~ Period(s) :
January 1, 1967 to January 15, 1967.

AFFIDAVIT OF MAILING

State of New York
County of Albany

Jean Wager, 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 4th day of August, 1976, she served the within Notice of Decision by (certified) mail upon Eagan & Griffin c/o Joseph C. Eagan (~~representative of~~) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Eagan & Griffin
c/o Joseph C. Eagan
2 Thomas Road
Westport, Connecticut
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

4th day of August, 1976.

Janet Mack

Jean Wager

STATE OF NEW YORK
STATE TAX COMMISSION

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c/o Joseph C. Eagan

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State of New York
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she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 4th day of August, 19 76, she served the within
Notice of Decision by (certified) mail upon Nathan B.
Bernstein, Esq. (representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Nathan B. Bernstein, Esq.
258 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

4th day of August, 19 76.

Jane Mack

Jean Wager



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

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

STATE TAX COMMISSION

ADDRESS YOUR REPLY TO

August 4, 1976

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

Eagan & Griffin
c/o Joseph C. Eagan
2 Thomas Road
Westport, Connecticut

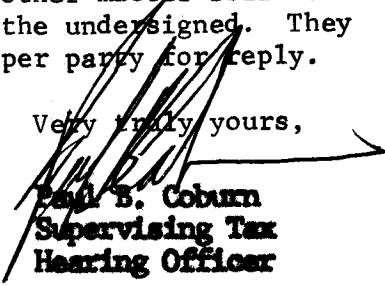
Gentlemen:

Please take notice of the **Notice of Decision**
of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to
Section(~~2~~) **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 TAX COMMISSION

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

ISSUE

Whether the gain on the sale of a membership ("seat") on the American Stock Exchange by its owner, Joseph C. Eagen is taxable in 1967 to the petitioner, a partnership, when the partnership had financed the purchase of the seat under an "ABC" agreement, and when the partnership had dissolved about four months before the sale is the issue in this case.

FINDINGS OF FACT

1. Eagen & Griffin of 74 Trinity Place, New York, New York was formed by an agreement dated December 1, 1962, as a successor to Frank C. Masterson & Co., to engage in the securities business as a specialist account on the American Stock Exchange. Mr. Joseph C. Eagen and Mr. W. Edward Griffin were equal partners, therein. They ceased doing business on September 9, 1966, after formally notifying the Exchange that they would do so, and they formally dissolved under an agreement dated October 13, 1966.

2. On November 14, 1963, Mr. Eagen had purchased a membership ("seat") on the American Stock Exchange. This seat was contributed to the firm of Eagen & Griffin. After the dissolution of that firm in October, 1966 the seat was not used for any purpose, either by the firm or by Mr. Eagen. The seat was sold on January 15, 1967 for \$90,000.00, the proceeds being retained by Mr. Eagen.

3. The partnership agreement provided

"Each of the parties contributes to the partnership the use of his membership in the American Stock Exchange and hereby agrees that, insofar as it is necessary for the protection of the creditors of the partnership and subject to the Constitution and Rules of said Exchange, the proceeds of the sale of his membership shall be an asset of the partnership... Each of the parties further agrees

that upon the dissolution of the partnership...he... will comply with the terms of one of the following options. (a) retain his membership and pay to the partnership the amount necessary to purchase another membership... or (b) sell his membership and pay the proceeds thereof over to the partnership..."

This provision is patterned after what is generally known as an "ABC" agreement though without the third option usually provided therein, namely, to transfer the seat for a nominal consideration to a nominee of the firm. The agreement further provided that any gain or loss in the value of Griffin's seat would be borne entirely by Eagen and any gain or loss in the value of Eagen's seat would be borne by the firm.

4. Eagen & Griffin was dissolved pursuant to an agreement dated October 13, 1966. Each partner kept his own seat. On the books, each seat had been valued at \$90,000.00 and was considered to be a distribution of a firm asset to the individual partner. The books also were adjusted to show the accrued gain on the seats; the gain on the Griffin seat being credited entirely to Eagen and the gain on the Eagen seat being credited one half to each partner, this being in accord with the partnership agreement. The original cost of each seat had been apparently already reflected in the capital account of each partner and it is so found.

5. The rules of the New York Stock Exchange provide that the proceeds of the sale of a seat must be available for the creditors of the partnership of which the member has been a partner, and must be so available for a reasonable time after such member retires as a general partner of the firm. (Rules 301, 302, 314). It has been stipulated that the rules of the American Stock Exchange are the same with respect to the ownership and sale of memberships.

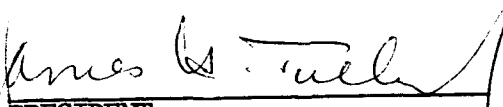
6. The failure of petitioners to file a return was under the advice of competent tax counsel.

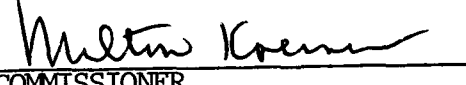
CONCLUSIONS OF LAW

A. That the petitioner is not subject to tax in 1967 on the sale by Mr. Eagen of the Stock Exchange membership because the firm had dissolved and the seat was no longer used in the business of the firm and, therefore, the deficiency is erroneous in its entirety and is cancelled.

DATED: Albany, New York
August 4, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER