

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
ARTHUR A. GAINES, JOSEPH A. MARTIN, JR., RAYMOND P. REIS et al.,  
Individually and as Co-Partners d/b/u the Firm Name and Style of : AFFIDAVIT OF MAILING  
GAINES, REIS & CO.

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Unincorporated Business :  
Taxes under Article ~~(xx)~~ 23 of the :  
Tax Law for the Year ~~(xx)~~ Fiscal Period ~~(xx)~~ :  
Ending January 31, 1968.

State of New York  
County of Albany

Catherine Steele, 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 17th day of September, 1976, she served the within

Notice of Decision by (certified) mail upon Arthur A. Gaines, Joseph  
Individually & as Co-Partners A. Martin, Jr., Raymond  
d/b/u the Firm Name P. Reis, et al.,  
Gaines, Reis & Co. ~~(representative of the)~~ the petitioner in the within proceeding,

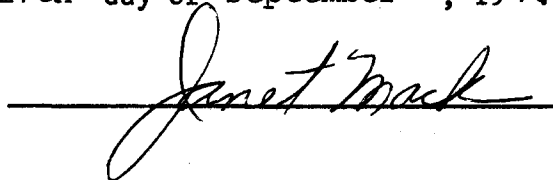
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Arthur A. Gaines, Joseph A. Martin, Jr., Raymond P. Reis, et al.,  
Individually & as Co-Partners d/b/u  
Gaines, Reis & Co.  
40 Wall Street  
New York, New York

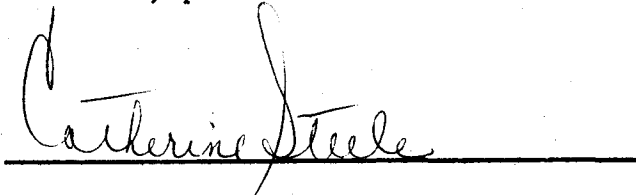
and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the ~~(representative of the)~~  
~~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

17th day of September, 1976





STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

ARTHUR A. GAINES, JOSEPH A. MARTIN, JR., RAYMOND P. REIS et al.,  
Individually and as Co-Partners d/b/u the Firm Name **AFFIDAVIT OF MAILING**  
and Style of

**GAINES, REIS & CO.**  
For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Unincorporated Business :  
Taxes under Article 23 of the :  
Tax Law for the Year ~~1967~~ **Fiscal** ~~1968~~ **Period** :  
Ending January 31, 1968.

State of New York  
County of Albany

Catherine Steele, 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 17th day of September, 1976, 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 10007

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

17th day of September, 1976.

Janet Mack

Catherine Steele



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

September 17, 1976

TELEPHONE: (518) 457-3850

Arthur A. Gaines, Joseph A. Martin, Jr., Raymond P. Reis, et al.,  
Individually & as Co-Partners d/b/u  
Gaines, Reis & Co.  
40 Wall Street  
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 **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 S. Coburn**  
Supervising Tax  
Hearing Officer

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
ARTHUR A. GAINES, JOSEPH A. MARTIN, JR.	:	
RAYMOND P. REIS et al., Individually	:	
and as Co-Partners d/b/u the Firm Name	:	DECISION
and Style of	:	
GAINES, REIS & CO.	:	
for Redetermination of Deficiency or for	:	
Refund of Unincorporated Business Tax under	:	
Article 23 of the Tax Law for the Fiscal	:	
Year ending January 31, 1968.	:	

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Arthur A. Gaines, Joseph A. Martin, Jr., Raymond P. Reis, et al., individually and as co-partners d/b/u the firm name and style of Gaines, Reis & Co., 40 Wall Street, New York, New York filed a petition under sections 722 and 689 of the Tax Law for redetermination of a deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the fiscal year ending January 31, 1968. Said deficiency issued on May 24, 1971 is in the amount of \$24,138.42 plus interest of \$4,360.61 for a total of \$28,499.03.

A hearing was held on February 9, 1973, at 9:15 A.M., at the offices of the State Tax Commission, 80 Centre Street, New York, New York before Nigel G. Wright, Hearing Officer. The petitioners appeared by Nathan B. Bernstein, Esq. The Income Tax Bureau appeared by Saul Heckelman, Esq., (James Scott, Esq., of Counsel).

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

ISSUE

Whether the gain on the sale of two stock exchange seats by their individual owners is taxable to the partnership, the petitioner herein, of which they are members is the issue in this case.

FINDINGS OF FACT

1. Gaines, Reis & Co. of 40 Wall Street, New York City, was organized in 1930, and was engaged in the securities business as specialists on the New York Stock Exchange.

2. Arthur Gaines in 1968 resided in New Jersey. He was a general partner in Gaines, Reis & Co. from 1930 until his retirement on January 31, 1968, when he changed his status to limited partner. Mr. Gaines had purchased a stock exchange seat in 1928 but had sold that seat in August 1951. In October, 1951, he acquired another seat which he sold on December 14, 1967. This was before his retirement as a general partner. Around 1970 he moved to Florida.

3. In 1968 Joseph A. Martin, Jr. resided in Garden City, Long Island. He had become a general partner of Gaines, Reis & Co. in 1945 and retired as such on March 31, 1967, when he became a limited partner. Mr. Martin had purchased a stock exchange seat in 1945. This had been financed with money advanced by the firm under an "ABC" agreement. However, in July 1951, Mr. Martin paid the firm the then market price of the seat, extinguishing the "ABC" agreement and causing the seat to be transferred to him outright. This seat was sold on April 13, 1967 shortly after his retirement as a general partner, and while he was a limited partner. After this time he moved to Arizona.

4. The balance sheet of the firm shows one stock exchange seat, that belonging to a Wallace Nessler, which was subject to an "ABC" agreement that is not involved in this case.

5. Both Mr. Gaines and Mr. Martin, pursuant to the rules of the New York Stock Exchange and the partnership agreement, had contributed the use of his membership to the firm and had agreed that the proceeds of the sale of the membership should be deemed an asset of the partnership so far as would be necessary for the protection of the creditors of the partnership. The agreement further provided that the memberships would remain the sole property of Mr. Gaines and Mr. Martin and should be excluded from the computation of the capital of the partnership, although they could be taken into account in the computation of net capital pursuant to rules of the New York Stock Exchange.

#### CONCLUSIONS OF LAW

A. That since the stock exchange seat owned by Mr. Gaines was sold while it was still held by the petitioner for use in its own business, the proceeds of such sale are deemed to be taxable to the partnership. (Gregory & Sons, STC June 19, 1972).

B. That since the stock exchange seat owned by Mr. Martin had been withdrawn from use by the partnership prior to its sale, the gain on that sale will not be attributed to the partnership.

C. That as a result of the foregoing reasons the deficiency under review is erroneous in part and is recomputed to be \$14,465.67 plus interest of \$2,625.09 to the date thereof, for a total of \$17,090.76.

D. That said sum is due together with such further interest  
as shall be computed under section 684 of the Tax Law.

DATED: Albany, New York  
September 17, 1976

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER