

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
WILLIAM W. HOFFMAN (Deceased)	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Unincorporated Business Taxes under	:	
Article 23 of the Tax Law for the Year 1966.	:	

Petitioner, the late William W. Hoffman, 110 East 42nd Street, New York, New York 10017, filed a petition for redetermination of a deficiency or for refund of unincorporated business taxes under Article 23 of the Tax Law for the year 1966. (File No. 01630).

A formal hearing was held before Edward L. Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on April 27, 1976, at 1:15 P.M. The petitioner appeared by Robert F. Little, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq., (Alexander Weiss, Esq. of counsel).

ISSUE

Whether the gain on sale or disposition of a stock exchange seat by petitioner, William W. Hoffman, in 1966 was subject to the unincorporated business tax as an asset used in a trade or business.

FINDINGS OF FACT

1. Petitioner, William W. Hoffman, timely filed a New York State resident income tax return for the year 1966. He did not file an unincorporated business tax return for that year.

2. The petitioner sold a seat on the American Stock Exchange on April 26, 1966, for \$100,000.00, which seat he had purchased on July 2, 1954, for \$5,571.97. On the

Schedule D of his Federal income tax return (Form 1040) for 1966, petitioner, William W. Hoffman, reported the sale. He set off the gain on the sale of the seat against capital losses for that year. He did not report the sale on his New York State income tax return for that year.

3. A Notice of Deficiency dated February 24, 1970, was issued to the petitioner, William W. Hoffman, together with a Statement of Audit Changes stating that the Income Tax Bureau had determined that the gain on the sale of the American Stock Exchange seat was subject to the unincorporated business tax since that seat represented an asset used in a trade or business. The tax deficiency was stated as \$3,386.51, plus interest of \$580.68, for a total due of \$3,967.19.

4. The petitioner, William W. Hoffman, timely filed a protest against the deficiency and asked for a formal hearing.

5. The petitioner, William W. Hoffman, was for many years an active trader in securities. He bought and sold stocks and bonds through a broker. After he bought the "seat" on the American Stock Exchange, he continued to buy and sell securities through a broker. Being then a member of the Exchange, however, petitioner, William W. Hoffman, received a considerable reduction in the commissions charged by the broker who recorded the transactions. Petitioner used the facilities of Shaskin & Co., stock brokers, for the bookkeeping on the numerous buys and sells of securities which he made daily. According to his Federal income tax return for 1966, Schedule D: "Gains and Losses from Sales or Exchanges of Property", petitioner had gross sales of securities amounting to \$4,099,920.02, which had a cost basis of \$4,126,030.52. The resulting short-term capital loss for 1966 was \$26,110.50.

6. The petitioner, William W. Hoffman, filed a Schedule D as part of the Federal Income Tax Form 1040 for 1966, indicating his address as 110 East 42nd Street, New York, New York, the same address he used for his New York State income tax return for that year. However, attached to that Form 1040 was also a Schedule C. It showed that the petitioner, William W. Hoffman, reported that his principal business activity was "dealer securities" and that his business location was 215 East 79th Street, New York, New York. The tax return reported business deductions for rent, telephone, electricity and other business expenses. The return showed gross business receipts of \$4,113.35.

7. Although the petitioner, William W. Hoffman, never met the financial requirements of the American Stock Exchange to enable him to act as a stock broker to the general public, testimony at the hearing indicated the petitioner did execute some trading orders for his regular broker, Shaskin & Co., on the New York Stock Exchange.

CONCLUSIONS OF LAW

A. That the activities of the petitioner, William W. Hoffman, were not solely the purchase and sale of securities for his own account. He was a self-denominated dealer in securities. The seat on the American Stock Exchange was an asset used in petitioner, William W. Hoffman's business.

B. That, therefore, the gain on the sale of the seat on the American Stock Exchange was subject to unincorporated business tax under section 703 of the Tax Law. The petition is denied and the Notice of Deficiency dated February 24, 1970 is sustained.

DATED: Albany, New York
February 28, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER