

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
KOERNER, GOLDSMITH, O. GRUSS & SON :  
and D.C. PORTSER  
For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund  
of Unincorporated Business :  
Taxes under Article ~~(2)~~ 23 of the  
Tax Law for the Year ~~(2)~~ 1967.:  
~~(2)~~

AFFIDAVIT OF MAILING

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 15th day of September, 1976, she served the within Notice of Decision by (certified) mail upon O. Gruss & Son and D.C. Portser ~~(representative of)~~ the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Koerner, Goldsmith, O. Gruss & Son & D.C. Portser  
80 Pine Street  
New York, New York 10005  
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)~~ ~~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

15th day of September, 1976

Catherine Steele

Janet Mack

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
KOERNER, GOLDSMITH, O. GRUSS & SON :  
and D.C. PORTSER :  
For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Unincorporated Business :  
Taxes under Article (x) 23 of the :  
Tax Law for the Year (~~xxxx~~Period(s) 1967.:

AFFIDAVIT OF MAILING

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 15th day of September , 1976 , she served the within  
Notice of Decision by (certified) mail upon Jack Wong, CPA  
(representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Jack Wong, CPA  
Oppenheim, Appel, Dixon & Co.  
140 Broadway  
New York, New York 10005  
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

15th day of September , 19 76

Janet Mack

Catherine Steele



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

September 15, 1976

TELEPHONE: (518) **457-2850**

Koerner, Goldsmith, O. Gruss & Son & D.C. Portser  
80 Pine Street  
New York, New York 10005

Gentlemen:

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

Please take further notice that pursuant to  
Section **(a) 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

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In the Matter of the Petition	:	
of	:	
KOERNER, GOLDSMITH, O. GRUSS & SON	:	
and D.C. PORTSER	:	DECISION
for a Redetermination of a Deficiency	:	
or for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law for	:	
the Year 1967.	:	

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Koerner, Goldsmith, O. Gruss & Son and D.C. Portser, 80 Pine Street, New York, New York 10005, filed a petition under sections 722 and 689 of the Tax Law for a redetermination of a deficiency issued April 14, 1971, in the amount of \$4,362.20 plus interest of \$784.89 for a total of \$5,147.09, for unincorporated business tax under Article 23 of the Tax Law for the year 1967.

A hearing was duly held on September 12, 1972, at the offices of the State Tax Commission, 80 Centre Street, New York, New York, before Nigel G. Wright, Hearing Officer. The petitioner was represented by Jack Wong, C.P.A. of Oppenheim, Appel, Dixon & Co. The Income Tax Bureau was represented by Saul Heckelman, Esq., appearing by Solomon Sies, Esq., of counsel. The record of said hearing has been duly examined and considered.

ISSUE

The issue in this case, is whether the gain on the sale of a seat on the American Stock Exchange is taxable to a firm, the petitioner herein, of which the owner of the seat had been a member.

FINDINGS OF FACT

1. The petitioner is a "joint account" of specialists on the American Stock Exchange. They filed New York partnership and unincorporated business tax returns under Article 23 of the Tax Law but claimed thereon the additional exemption of section 709(2) of the Tax Law indicating that each member of the account also filed his own Article 23 return.

2. Mr. Portser had been a member of the petitioner "joint account" but he left it on February 21, 1967. On February 23, 1967, two of the members of petitioner joined with a third person to continue petitioner's business. Also on February 23, 1967, Mr. Portser became a member of a different joint account; that of Sheldon, Snyder, D.C. Portser, Gerald Lerman, Weis, Voisin and Cannon, Inc.

3. Mr. D.C. Portser acquired a membership, seat on the American Stock Exchange in December 13, 1933. Mr. Portser sold this seat on March 16, 1967. The computation of the gain therein has not been disputed.

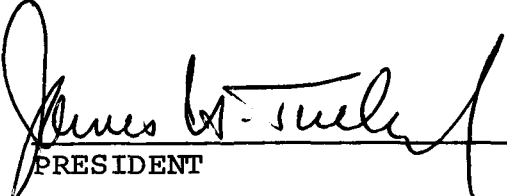
CONCLUSIONS OF LAW

It is clear that the stock exchange seat, the gain on which is the subject of the deficiency notice, had been withdrawn from the use of the petitioner herein and affirmatively used in another and a different business. The gain in question, therefore, cannot be taxed to petitioner.

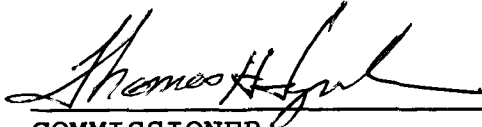
The deficiency under review is cancelled in its entirety.

DATED: Albany, New York  
September 15, 1976

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER