In the Matter of the Petition

of Estate of HAROLD MASIUS Louis Kaplan, Executor

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or a Revision of a Determination or a Refund of Unincorporated Businsss

Taxes under Article(s) 23 of the Tax Law for the Year(s)xaxxRaxion(x):

1967.

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 Estate of Harold Masius

Louis Kaplan, (representative cod) the petitioner in the within proceeding,

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

as follows:

Estate of Harold Masius (Louis Kaplan, Executor)

c/o Charles Hecht & Co.

595 Madison Avenue

New York, New York 10022

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 extitle) petitioner herein and that the address set forth on said wrapper is the last known address of the (representative contains) petitioner.

Sworn to before me this

4th day of August

, 19 76.

Jean Wager

In the Matter of the Petition

of

Estate of HAROLD MASIUS

AFFIDAVIT OF MAILING

Louis Kaplan, Executor 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 (2) 050 Besied (8) 1967.

State of New York County of Albany

, being duly sworn, deposes and says that Jean Wager 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 Robert F.

(representative of) the petitioner in the within proceeding, Welch, Esq. by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Robert F. Welch, Esq.

Olvany, Eisner & Donnelly, Esqs.

645 Madison Avenue 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

In the Matter of the Petition

of

Estate of HAROLD MASIUS Louis Kaplan, Executor AFFIDAVIT OF MAILING

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(**) criver Period(**) : 1967.

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

Louis Kaplan, CPA

Notice of Decision by (certified) mail upon Charles Hecht &

Co. (representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed Louis Kaplan, CPA

as follows:

Charles Hecht & Co. 595 Madison Avenue

New York, New York 10022

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

Jean Wager



STATE OF NEW YORK DEPARTMENT OF TAXATION AND FINANCE

TAX APPEALS BUREAU

STATE CAMPUS ALBANY, N.Y. 12227

August 4, 1976

ADDRESS YOUR REPLY TO

TELEPHONE: (518) 457-3850

Estate of Harold Masius (Louis Kaplan, Executor) c/o Charles Hecht & Co. 595 Madison Avenue New York, New York 10022

Gentlemen:

Please take notice of the Notice of 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 decision must be commenced within 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 paply.

en frestry yours

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

Estate of HAROLD MASIUS Louis Kaplan, Executor

DECISION

for redetermination of a deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the year 1967

Petitioner, Harold Masius, by his executor Louis Kaplan, c/o
Charles Hecht & Co., 595 Madison Avenue, New York, New York 10022,
filed a petition under sections 689 and 720 of the Tax Law for refund
of taxes paid pursuant to a deficiency notice for unincorporated
business tax under Article 23 of the Tax Law for the year 1967. Said
petition was filed on or about November 1, 1972 after a denial on or
about June 1, 1972, of a claim for refund filed on December 7, 1970
for taxes paid on November 2, 1971. Said refund claimed is \$7,190.00
plus interest.

A hearing was duly held at the offices of the State Tax Commission,
Two World Trade Center, New York City on December 9, 1975 at 1:00 P.M.
before Nigel G. Wright, Hearing Officer. The petitioner appeared by
Charles Hecht & Co., (Louis Kaplan, C.P.A.) and by Olvany, Eisner and

Donnelly, Esqs. (Robert F. Welch, Esq. of counsel). The Income
Tax Bureau appeared by Peter J. Crotty, Esq., (Michael Alexander,
Esq. of counsel).

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

ISSUE

Whether a member of the New York Stock Exchange is subject to the unincorporated business tax on the grounds of the sale of his membership is the issue in this case.

FINDINGS OF FACT

- 1. In 1946, Mr. Harold Masius was admitted to membership in the New York Stock Exchange. He purchased such membership with funds borrowed from his wife, although this loan apparently did not encumber the new membership.
- 2. From 1946 to 1960, Mr. Masius was a member of the firm of McManus and Mackey and acted as a specialist on the floor of the New York Stock Exchange. From 1960 to December 1964 he was a member of the firm of R. J. Buck and Company. When he left the Buck firm, he was 64 years old.
- 3. During 1965, Mr. Masius transacted a small amount of business on the floor of the stock exchange as an individual. This was in the early part of the year.
- 4. In May 1965, Mrs. Masius was hospitalized. Mr. Masius was himself hospitalized, in July and again in August of 1965.

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- ుకు మేమరాలు కొట్టులు అదే త్రాతాకికి కోటు కులుగు ఉయ్యేశుతులు కొక్కా కాటె మార్క్ కాటె మెర్క్ కాటె కొ రావేశ్వ కట్టుకు కొట్టుకు టెట్టాలు అయించుతున్నాయి. • మహారావేతుకు కోడ్టువేళి దేశాలుకో అక్కే దే ఈ కోస్ట్ మక్షిగ్గుకు ఉద్దేశం అమించి అమించినే అట్టాలుకోనింది. తెక్కేళ్ళ కోమేశు కూడుకోని వేశా తమ్మారుకు ఉమ్మార • కోమ్మార్కు ఈ కాట్ల మమ్మే కుట్టుకోవారు.
- - ఇందుకున్నాలో సౌకర్యాలుకు కొట్టాలు కొట్టుడ్టులాటుకాడాని ఇంటేస్తానిని •ంగ్ కెక్కెక్ ఇంటేట్లాకు కొట్టి - ఎక్టి కార్ కట్ల ఎమ్కార్ •కిందున్నే రెక్కుడే అంది అక్కుడినికుండు పోటటనేది కట్టే స్టు డాటకట్ల కట్టే ఈ. -రాశాకక ఉన్నే స్ట్ చేయన్క సాక్రంశు
 - ್ರಾರಾ ಶಾರ್ವವರ್ .೧೮ -ಕೆಸಲ್ನೆಟಿಕ್ಕೊಳ್ಳಲ್ಲ ಅನಾರ ಅಭ್ಯ ವಾಗ .೧೯೯೩ ರಾಹಕ ರದ ೧೯೯೯ರ ದಿವರಣ್ಯಾತ ಪಟಿ ಪತಿಯಾಗಾ ಮಾರಾದ ಇಲ್ಲಾಗ ಪಟಿಸಿದ್ದಾರಿಕೆ

- 5. On January 18, 1966, petitioner's membership was listed with the exchange for sale at the price of \$280,000. At the time, the highest price paid for a seat had been \$260,000. During 1966, the value of seats ranged between \$197,000 and \$270,000. In early 1967 the value of the seats began to rise. The membership was actually sold on March 30, 1967 for \$280,000.
 - 6. Mr. Masius died of cancer on December 17, 1970.

CONCLUSIONS OF LAW

A. That Harold Masius used the stock exchange seat in question in his own business because it is clear that the reason for the sale of the seat was the illness and injuries of petitioner and we cannot find or conclude that petitioner's intention in retaining the assets was in any way for investment purposes. Therefore, the deficiency under review is correct and the amounts thereof are due together with such interest as shall be computed under section 684 of the Tax Law.

DATED: Albany, New York August 4, 1976 STATE TAX COMMISSION

PKEQIDENI

COMMISSIONER

COMMISSIONER