

STATE OF NEW YORK  
STATE TAX COMMISSION

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 (a) 23 of the :  
Tax Law for the Year (span 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  
Notice of Decision by (certified) mail upon Estate of Harold Masius  
Louis Kaplan, (representative of) the petitioner in the within proceeding,  
Executor  
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  
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.

Jean Wager

Just Mack

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
Estate of HAROLD MASTIUS  
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 (s) or Period(s)  
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 Robert F. Welch, Esq. (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Robert F. Welch, Esq.  
Olvany, Eisner & Dornelly, 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 day of August, 1976.

Janet Mack

Jean Wager

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
Estate of HAROLD MASTIUS  
Louis Kaplan, Executor  
For a Redetermination of a Deficiency or  
a Revision of a Determination or a Refund  
of Unincorporated Business  
Taxes under Article (a) 23 of the  
Tax Law for the Year ~~(a) or Period(s)~~  
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 Louis Kaplan, CPA  
Charles Hecht &  
Co. (representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Louis Kaplan, CPA  
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, 1976

Jean Wager

Janet Mach



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

August 4, 1976

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( ~~s~~ ) **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,

*[Signature]*  
Paul B. Coburn  
Supervising Tax  
Hearing Officer

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

## STATE TAX COMMISSION

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.



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.

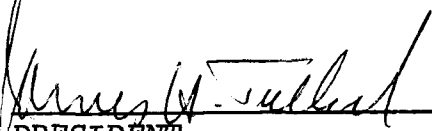
6. Mr. Masius died of cancer on December 17, 1970.

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

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER