

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

PETER P. McDERMOTT & COMPANY

AFFIDAVIT OF MAILING

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 ~~(xxxxxx)~~ 1966. :

State of New York
County of Albany

Donna Scranton , 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 Peter P. McDermott &
Company ~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Peter P. McDermott & Company
42 Broadway
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.

Donna Scranton

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
PETER P. McDERMOTT & COMPANY

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Unincorporated Business :
Taxes under Article ~~(ss)~~ 23 of the :
Tax Law for the Year ~~(ss) or Period (ss)~~ 1966.:

State of New York
County of Albany

Donna Scranton, 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 Jerome Kamerman, Esq., (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Jerome Kamerman, Esq.
500 Fifth Avenue
New York, New York 10036

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

Donna Scranton

Janet Mack



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**

Peter P. McDermott & Company
42 Broadway
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(§) **733** 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 E. COBURN
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	:	
PETER P. McDERMOTT & COMPANY	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business	:	
Taxes under Article 23 of the Tax Law	:	
for the Year 1966.	:	

Petitioners, Peter J. McDermott, Frank Florentino, James McDermott, et al., individually and as copartners d/b/u the firm name and style of Peter P. McDermott & Company, 42 Broadway, New York, New York, filed a petition for the redetermination of a deficiency issued April 13, 1970, in the amount of \$2,800.00, plus interest of \$503.33, for a total of \$3,303.33 in unincorporated business taxes under Article 23 of the Tax Law for the year 1966.

A hearing was held on June 14, 1972, at the offices of the State Tax Commission, 80 Centre Street, New York, New York, before Nigel G. Wright, Hearing Officer. The petitioner appeared by Jerome Kamerman, Esq. The Income Tax Bureau appeared by Saul Heckelman, Esq., (Francis X. Boylan, Esq., of counsel). The record of said hearing has been duly examined and considered.

ISSUE

Whether the gain on the sale of seats on the New York Stock Exchange and the American Stock Exchange by their owners can be attributed to the partnership of which the owners were general partners at the time of the sale of such seats is the issue in this case.

FINDINGS OF FACT

1. Peter P. McDermott & Company of 42 Broadway, New York, New York, is a partnership doing business as a general securities broker and dealer. At one time, it had ten partners. Four partners owned memberships ("seats") on stock exchanges. Two of these seats were financed by or through the firm under "A B C" agreements. These seats appeared on the balance sheets of the firm. The other two seats were owned by John H. McDermott and Frank G. Florentino and had been financed by them without the aid of the firm.

2. The partnership agreement provides:

"Frank G. Florentino and ... severally and respectively agree to contribute to the partnership, and to allow to remain with the partnership, the use of his respective membership in the New York Stock Exchange, and each of them does further agree not to sell or otherwise dispose of or impair said membership during the term of this agreement, and agrees that, subject to the constitution, rules, regulations and practices of the New York Stock Exchange, the market value of his respective seat or the proceeds of his respective membership shall be deemed an asset of the partnership so far as may be necessary for the security and protection of the creditors of the partnership."

It provides further that:

"... and John H. McDermott respectively agree to contribute to the partnership the use of their respective memberships on the American Stock Exchange, and each of them agrees not to sell or otherwise dispose of or impair said membership during the term of this agreement. Each of them agrees that, subject to the constitution, rules, regulations and practices of the American Stock Exchange, the proceeds of his said membership shall be deemed an asset of the partnership insofar as may be necessary for the protection of the creditors of the partnership."

3. John H. McDermott was a general partner in the firm for many years until his retirement in 1969. He had purchased a membership ("seat") on the American Stock Exchange in 1965. He sold that seat in December, 1966 realizing a profit thereon. After said sale, he continued as a general partner of the firm.

4. Frank Florentino had been a general partner of the firm for over ten years. He had purchased a membership (seat) on the New York Stock Exchange in 1965. He sold that seat in June, 1966 realizing a profit thereon. After said sale, he continued as a general partner of the firm.

5. The rules of the New York Stock Exchange provide that the proceeds of the sale of a seat must be available for the creditors of the partnership of which the member has been a partner, and must be so available for a reasonable time after such member retires as a general partner of the firm. (Rules 301,302,314). It has been stipulated that the rules of the American Stock Exchange are the same with respect to the ownership and sale of memberships.

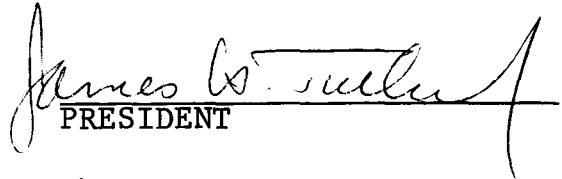
CONCLUSIONS OF LAW

A. That the stock exchange seats in question were assets of the partnership for tax purposes and the gain on the sale of such seats while the owners were general partners is taxable to the partnership (Gregory & Sons, State Tax Commission June 19, 1972)

and, therefore, the deficiency is correct and is due together with such further interest as shall be computed under section 684 of the Tax Law.

DATED: Albany, New York
August 4, 1976

STATE TAX COMMISSION

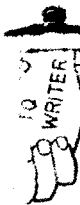

PRESIDENT


COMMISSIONER


COMMISSIONER

STATE OF NEW YORK
Department of Taxation and Finance
TAX APPEALS BUREAU

STATE CAMPUS
ALBANY, N. Y. 12227



- ☐ Moved, left no address
☒ No such number
☒ Moved, not forwardable
☐ Addressee unknown
 New York, A. J. 12227

Peter P. McDermott & Company
42 Broadway
New York, New York



AUG 6 1976



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

U.B.T.

TAX APPEALS BUREAU

STATE CAMPUS
ALBANY, N.Y. 12227

STATE TAX COMMISSION

ADDRESS YOUR REPLY TO

August 4, 1976

TELEPHONE: (518) 457-3850

┌ Peter P. McDermott & Company
42 Broadway
New York, New York

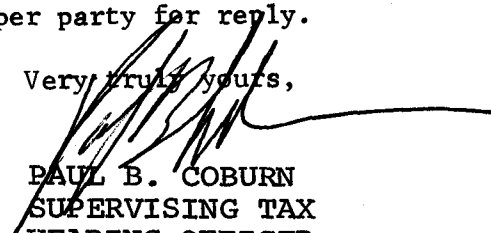
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PAUL B. COBURN
SUPERVISING TAX
HEARING OFFICER

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cc: Petitioner's Representative:

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STATE OF NEW YORK
STATE TAX COMMISSION

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DATED: Albany, New York
August 4, 1976

STATE TAX COMMISSION


PRESIDENT

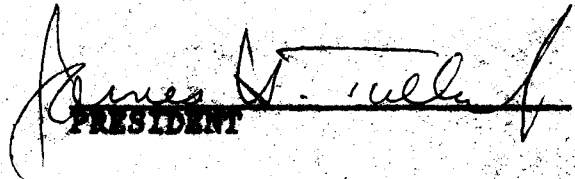

COMMISSIONER

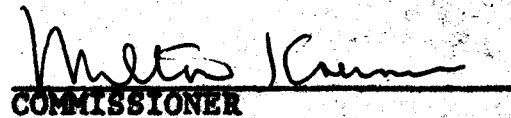

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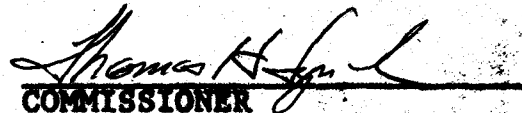
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DATED: Albany, New York
August 4, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

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the report of the Commission shall be considered as a report of the
of the Commission.

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