

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

UNITED STATES STATIONERY 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 (s) 23 of the :  
Tax Law for the Year ~~(s) or Period(s)~~ :  
Ending August 31, 1968

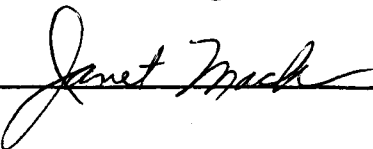
State of New York  
County of Albany

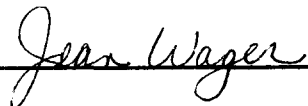
Jean Wager, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 4th day of August, 1976, she served the within Notice of Decision by (certified) mail upon United States Stationery Co. ~~(representative of)~~ the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: United States Stationery Company  
c/o Moses & Singer  
51 West 51st St.  
New York, New York 10019  
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)~~ ~~xxxxxx~~ 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.

  
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STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

UNITED STATES STATIONERY 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 ~~(2)~~ 23 of the :  
Tax Law for the Year ~~(2000)~~ Period ~~(s)~~ :  
Ending August 31, 1968

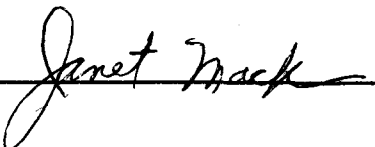
State of New York  
County of Albany

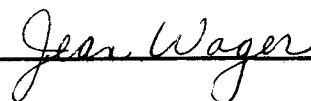
Jean Wager, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 4th day of August, 1976, she served the within Notice of Decision by (certified) mail upon Jerome M. Lasky, Esq. (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Jerome M. Lasky, Esq.  
c/o Moses & Singer  
51 West 51st Street  
New York, New York 10019  
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.

  
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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~~

United States Stationery Company  
c/o Moses & Singer  
51 West 51st St.  
New York, New York 10019

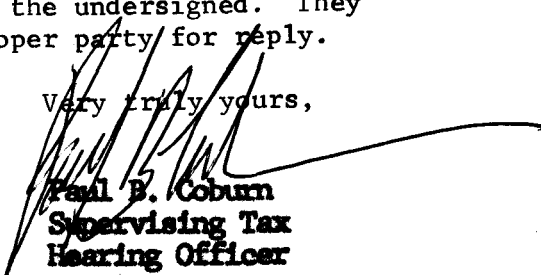
Gentlemen:

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

Please take further notice that pursuant to  
Section(g) **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	:	
of	:	
DAVID TEITELBAUM and	:	
SAMUEL FINGERHUT, et al.	:	DECISION
d/b/u the firm name and style of:	:	
UNITED STATES STATIONERY CO.	:	
for Redetermination of a Deficiency	:	
or for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law for	:	
the Fiscal Year Ending August 31, 1968.	:	

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David Teitelbaum and Samuel Fingerhut, et al., d/b/u the firm name and style of United States Stationery Co., filed a petition for redetermination of a deficiency notice issued under date of August 30, 1971, in the amount of \$46,743.63 plus interest of \$7,593.97 for a total of \$54,337.60 for unincorporated business tax under Article 23 of the Tax Law for the fiscal year ending August 31, 1968.

A hearing was duly held before Nigel G. Wright, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York, on February 5, 1973. Jerome M. Lasky, Esq. of Moses & Singer represented petitioners. Saul Heckelman, Esq., appearing by James A. Scott, Esq., represented the Income Tax Bureau.

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

ISSUE

The issue in this case is whether the petitioner, a partnership, sold its assets which would be subject to tax or whether the individual partners together merely sold their partnership interests which would not be subject to tax.

FINDINGS OF FACT

1. David Teitelbaum, Samuel Fingerhut, William Teitelbaum, Arthur Fingerhut and Carl Teitelbaum were the partners in the United States Stationery Co. This firm had its offices at 100 Fifth Avenue, New York City. It was engaged in the business of the mail order sales of office furniture and equipment.

2. Perfect Film and Chemical Corp., now known as Cadence Industries, made an attractive offer for the purchase of the business which the partners decided to accept. A contract was entered into which stated that "Each of Sellers hereby sells, assigns and transfers his entire partnership interest in the Company to Buyer for the sum of \$384,000 and Buyer hereby purchases the partnership interest of each Seller in the Company for said sum."

These amounts were paid one-half in cash (\$192,000.00 each) and one-half in 5% notes. The interest received by each partner amounted to \$5,444.38. The total purchase price to all partners was this \$1,920,000.00 plus interest of \$27,221.90. At the same time, the purchaser here also

purchased the stock in certain corporations which some of the partners in United States Stationery Co. had an interest in.

3. The deficiency notice finds that the partnership allocation ratio should be increased by 13.5% from 44% to 57.5%. The New York portion of income reported on the return is accordingly increased by \$51,762.91. This is not disputed and the tax attributable to this has been paid. The deficiency notice also adds to income the sum of \$1,612,827.46 as gain on the sale here in question. This amount has not been disputed. It also adds \$63,746.65 as interest on the notes received in the sale. It is now agreed that said interest should be reduced by \$36,524.75 to \$27,221.90. The tax attributable to this reduction is \$1,018.32. The remaining amount of tax of \$45,725.29 is attributable to the gain of \$1,612,227.46 and interest of \$27,221.90 and is in dispute in this proceeding.

#### CONCLUSIONS OF LAW

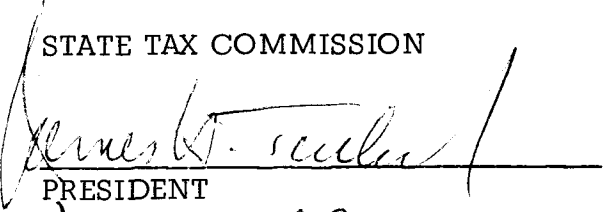
A. That the transaction entered into by petitioners, David Teitelbaum and Samuel Fingerhut, et. al., was the sale by the partnership of its assets. The concept of "conformity" between the Federal Internal Revenue Code and the New York State Tax Law does not mean that New York State is precluded from imposing an unincorporated business tax in a situation such as this when

the gain from the sale is reported only by the individual partners for Federal income tax purposes. Section 705(a) and the Regulations thereunder specifically define gross income of an unincorporated business to include the items of income and gain which are includable in the gross income of the individual or entity for Federal income tax purposes. Therefore, the gain realized from the sale of the assets of the partnership was subject to the unincorporated business tax.

B. That the petition is denied and the Notice of Deficiency, as modified, is sustained.

DATED: Albany, New York  
August 4, 1976

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER