

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

WILLIAM J. LANGE

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(s) or ~~Period(s)~~ :  
1967 thru 1969

State of New York  
County of Albany

Marsina Donnini, 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 July, 1977, she served the within  
Notice of Decision by (certified) mail upon William J. Lange

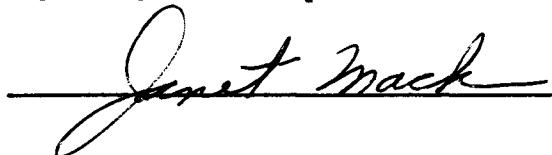
(~~representative of~~) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Mr. William J. Lange  
221 Candee Avenue  
Sayville, NY

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 July, 1977





STATE OF NEW YORK  
STATE TAX COMMISSION

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of  
WILLIAM J. LANGE

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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 thru 1969

State of New York  
County of Albany

Marsina Donnini, 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 July, 1977, she served the within Notice of Decision by (certified) mail upon Maurice Greenfield (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Maurice Greenfield, CPA  
11 John Street  
New York, NY  
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 July, 1977.

Marsina Donnini

Janet Mac



STATE OF NEW YORK  
STATE TAX COMMISSION  
TAX APPEALS BUREAU  
ALBANY, NEW YORK 12227  
**July 15, 1977**

JAMES H. TULLY JR., PRESIDENT  
MILTON KOERNER  
THOMAS H. LYNCH

**Mr. William J. Lange**  
**221 Candee Avenue**  
**Sayville, NY**

**Dear Mr. Lange:**

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

You have now exhausted your right of review at the administrative level. Pursuant to section **722** of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within **4 months** from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,

  
**Paul B. Ceburn**  
**Supervising Tax Hearing Officer**

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	:	
WILLIAM J. LANGE	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Unincorporated Business Taxes under	:	
Article 23 of the Tax Law for the Years 1967	:	
through 1969.	:	

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Petitioner, William J. Lange, residing at 221 Candee Avenue, Sayville, New York, filed a petition for the redetermination of a deficiency issued February 22, 1971, in the amount of \$1,230.00 plus interest of \$129.33 for a total of \$1,359.33 in unincorporated business taxes, under Article 23 of the Tax Law for the years 1967 through 1969. (File No. 01855). A formal hearing was held 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 Maurice Greenfield, C.P.A. 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 interest payments received by petitioner, William J. Lange, during the years 1967 through 1969 in connection with the sale of his stock exchange seat in 1966 were subject to the Unincorporated Business Tax.

FINDINGS OF FACT

1. Petitioner, William J. Lange, was a resident of New York and a member of the New York Stock Exchange. For several years prior to August, 1966, Mr. Lange was a member of the "joint-account" of F. V. Foster and W. J. Lange, which was a "specialist" on the New York Stock Exchange. Mr. Lange acted as a "floor broker" and thus was personally and directly active in the use of the membership on the floor of the Exchange. Mr. Lange retired in August, 1966 and the joint account ceased doing business.

2. Petitioner, William J. Lange, sold his stock exchange membership ("seat") on September 15, 1966, to his son for \$220,000.00, payable entirely by a note at 6% interest. The son paid only the interest, which amounted to \$13,200.00 annually during the years in question.

3. There is no evidence as to the use of the membership between the time petitioner, William J. Lange, retired and before it was sold one month later.

4. There is no evidence that the joint account filed any tax returns at any time and in particular, there is no evidence that the joint account ever declared the membership to be its own business asset.

CONCLUSIONS OF LAW

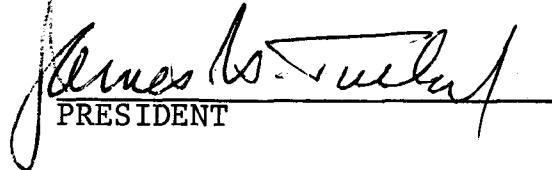
A. That the interest payments received by petitioner, William J. Lange, during the years 1967, 1968 and 1969, in connection with the sale of his New York Stock Exchange seat in 1966, were not subject to the Unincorporated Business Tax under section 703 of the Tax Law. This remains true even if the sale of the

seat in 1966 constituted the sale of a business asset, since during the years 1967, 1968 and 1969 petitioner did nothing in connection with his former business other than receive the interest payments which were automatically paid when due. Fishel v. State Tax Commission 48A.D.2d.381, 370 N.Y.S.2d 230 Leyendecker v. State Tax Commission 11A.D.2d 747 affd 9 N.Y. 707

B. That the petition of William J. Lange is granted and the Notice of Deficiency issued February 22, 1971 is cancelled.

DATED: Albany, New York  
July 15, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER