

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
B.P. LESTER, MARK DAVIDS & HAROLD F. BEALE,  
RYONS & COMPANY, & LESTER, RYONS & COMPANY  
& LESTER, RYONS & CO. LIQUIDATING TRUST  
For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Unincorporated Business :  
Taxes under Article ~~(b)~~ 23 of the :  
Tax Law for the Year ~~(b)(1)(A)(i)(ii)(iii)(iv)(v)(vi)(vii)(viii)(ix)(x)(xi)(xii)(xiii)(xiv)(xv)(xvi)(xvii)(xviii)(xix)(xx)(xxi)(xxii)(xxiii)(xxiv)(xxv)(xxvi)(xxvii)(xxviii)(xxix)(xxx)~~ :  
1969.

AFFIDAVIT OF MAILING

State of New York  
County of Albany

Bruce Batchelor, being duly sworn, deposes and says that

he is an employee of the Department of Taxation and Finance, over 18 years of

age, and that on the 26 day of April, 1977, he served the within

Notice of Decision

by (certified) mail upon B.P. Lester, Mark Davids  
& Harold F. Beale, Ryons &  
& Lester, Ryons & Co.

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

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
B. P. Lester, Mark Davids and Harold F. Beale, individually  
as follows: and as co-partners, d/b/u the firm name and style of  
Lester, Ryons & Company and Lester, Ryons & Co. Liquidating Trust  
453 South Spring Street

Los Angeles, California 90013  
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)~~  
~~(b)(1)(A)(i)(ii)(iii)(iv)(v)(vi)(vii)(viii)(ix)(x)(xi)(xii)(xiii)(xiv)(xv)(xvi)(xvii)(xviii)(xix)(xx)(xxi)(xxii)(xxiii)(xxiv)(xxv)(xxvi)(xxvii)(xxviii)(xxix)(xxx)~~ petitioner herein and that the address set forth on said wrapper is the  
last known address of the ~~(representative of)~~ petitioner.

Sworn to before me this

26 day of April, 1977.

Bruce Batchelor

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

April 26, 1977

TELEPHONE: (518) **457-1723**

B. P. Lester, Mark Davids and  
Harold F. Beale, individually  
and as co-partners, d/b/u  
the firm name and style of  
Lester, Ryons & Company and  
Lester, Ryons & Co. Liquidating Trust  
453 South Spring Street  
Los Angeles, California 90013

Gentlemen:

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

Please take further notice that pursuant to  
Section(2) **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	:	
B. P. LESTER, MARK DAVIDS AND	:	
HAROLD F. BEALE, individually	:	
and as co-partners, d/b/u	:	
the firm name and style of	:	DECISION
LESTER, RYONS & COMPANY and	:	
LESTER, RYONS & CO. LIQUIDATING TRUST	:	
for a Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business Tax	:	
under Article 23 of the Tax Law for	:	
the Year 1969.	:	

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B. P. Lester, Mark Davids and Harold F. Beale, individually and as co-partners, d/b/u the firm name and style of Lester, Ryons & Company, and Lester, Ryons & Co. Liquidating Trust, 453 South Spring Street, Los Angeles, California 90013, filed a petition under sections 689 and 722 of the Tax Law for a redetermination of a deficiency of unincorporated business tax under Article 23 of the Tax Law, for the year 1969.

A formal hearing was duly held on April 8, 1975, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, before Nigel G. Wright, Hearing Officer. The petitioner was represented by J. Kenneth Thompson, Esq. The Income Tax Bureau was represented by Saul Heckelman, Esq. (James A. Scott, Esq., of counsel). The record of said hearing has been duly examined and considered.

ISSUES

I. Whether a California based securities broker and dealer, which owned a seat on the New York Stock Exchange, but had no offices or employees in this state, and transacted its business on the Exchange through New York correspondents, is subject to unincorporated business tax on the gain from the sale of such seat.

II. If said gain is subject to unincorporated business tax, may the amount of the gain realized be reduced by the amount of dues, assessments and other payments made by petitioner to maintain the seat?

FINDINGS OF FACT

1. On January 29, 1973, the Income Tax Bureau issued a Statement of Audit Changes against B. P. Lester, Mark Davids and Harold F. Beale, individually and as co-partners, d/b/u the firm name and style of Lester, Ryons & Company, imposing New York State unincorporated business tax liability for the year 1969 in the amount of \$12,529.92, plus interest of \$2,096.26, for a total of \$14,626.18. A Notice of Deficiency for said amounts was also issued on January 29, 1973, under File No. P/S - 3897.

2. B. P. Lester, Mark Davids and Harold F. Beale, individually and as co-partners, d/b/u the firm name and style of Lester, Ryons & Company, and Lester, Ryons & Co. Liquidating Trust, filed a petition for a redetermination of said deficiency.

3. Lester, Ryons & Company, was a securities broker and dealer with its principal office in Los Angeles, California. It had no offices or employees in New York State and prior to 1969 it filed no tax returns with New York State. It ceased doing business on October 31, 1969. It had thirty general partners at that time. Its assets and affairs are now managed by the Lester, Ryons & Co. Liquidating Trust.

4. Lester, Ryons & Company had purchased a membership or "seat" on the New York Stock Exchange in 1951. Said seat was originally held in the name of one of its general partners, B. P. Lester and was transferred to the name of another general partner, Sigurd R. Wendlin, Jr., on January 2, 1969. The seat was subsequently sold to an outsider on October 31, 1969, for the price of \$350,000.00.

5. Although Lester, Ryons & Company had a partner designated as its floor representative, said representative effected no purchases or sales of securities on the floor of the New York Stock Exchange. Its transactions were handled by corresponding brokers in New York. The main correspondent was Pershing & Company.

6. The sale of the seat on the New York Stock Exchange was reported on the 1969 United States partnership return of Lester, Ryons & Company as a sale of a capital asset with a tax cost or

other basis of \$58,979.27 and a resulting capital gain of \$291,020.73. Lester, Ryons & Company reported an overall loss of more than one million dollars on its Federal return for the year 1969.

7. The following amounts were expended by Lester, Ryons & Company in connection with its membership on the New York Stock Exchange from 1951 through 1969:

Dues paid to the New York Stock Exchange from 1951 through 1969, \$20,052.03;

Amounts paid towards the Exchange's gratuity fund from 1951 through 1969, \$6,081.36;

Amounts paid to the Exchange from 1953 through 1963 for the retirement of memberships, \$1,645.00;

Amounts paid to the Exchange in 1964, 1965 and 1966 in connection with the bankruptcy of Ira Haupt & Co., \$9,043.94;

Amounts paid to the Exchange, as assessments on members from 1951 through 1969 computed at 1% of net commissions, \$135,544.54;

The cost of an arbitration proceeding involving the terms of sale of the membership, \$1,229.11.

The petitioners claim that the above amounts, which total \$173,595.98, should be added to the Federal cost basis of the seat in determining the New York cost basis for unincorporated business tax purposes.

#### CONCLUSIONS OF LAW

A. That the seat on the New York Stock Exchange was an asset of Lester, Ryons & Company (Matter of Gregory & Sons, State Tax Commission, June 19, 1972; Matter of Freiday & Co., State Tax Commission, December 1, 1972.)

B. That said asset was intangible personal property which had a business situs in New York State and the gain on the sale thereof is subject to taxation by New York State. (People ex rel. Whitney v. Graves, 299 U.S. 366 (1937)).

C. That the gain on the sale of the seat constituted unincorporated business gross income within the meaning and intent of section 705(a) of the Tax Law and is subject to unincorporated business tax as imposed by section 701(a) of the Tax Law.

D. That petitioners have failed to prove that the payments totalling \$173,595.98 made in connection with the maintenance of the seat were capital expenditures which would increase the tax basis of the seat and reduce the amount of the gain.

E. That the petition is hereby denied.

DATED: Albany, New York  
April 26, 1977

STATE TAX COMMISSION



PRESIDENT



COMMISSIONER



COMMISSIONER





STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

UBT

STATE TAX COMMISSION

TAX APPEALS BUREAU  
STATE CAMPUS  
ALBANY, N.Y. 12227

ADDRESS YOUR REPLY TO

April 26, 1977

TELEPHONE: (518) 457-1723

B. P. Lester; Mark Davids and  
Harold F. Beale, individually  
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the firm name and style of  
Lester, Ryons & Company and  
Lester, Ryons & Co. Liquidating Trust  
453 South Spring Street  
Los Angeles, California 90013

Gentlemen:

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

Please take further notice that pursuant to  
Section(X) 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:

FORMAL RETURN

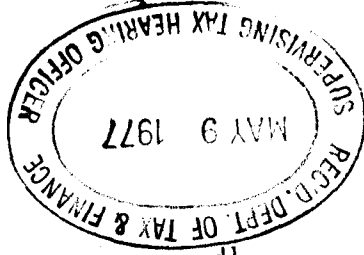
## STATE OF NEW YORK

Department of Taxation and Finance  
TAX APPEALS BUREAU

STATE CAMPUS

ALBANY, N. Y. 12227

B. P. Lester, Mark Davids and  
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453 South Spring Street  
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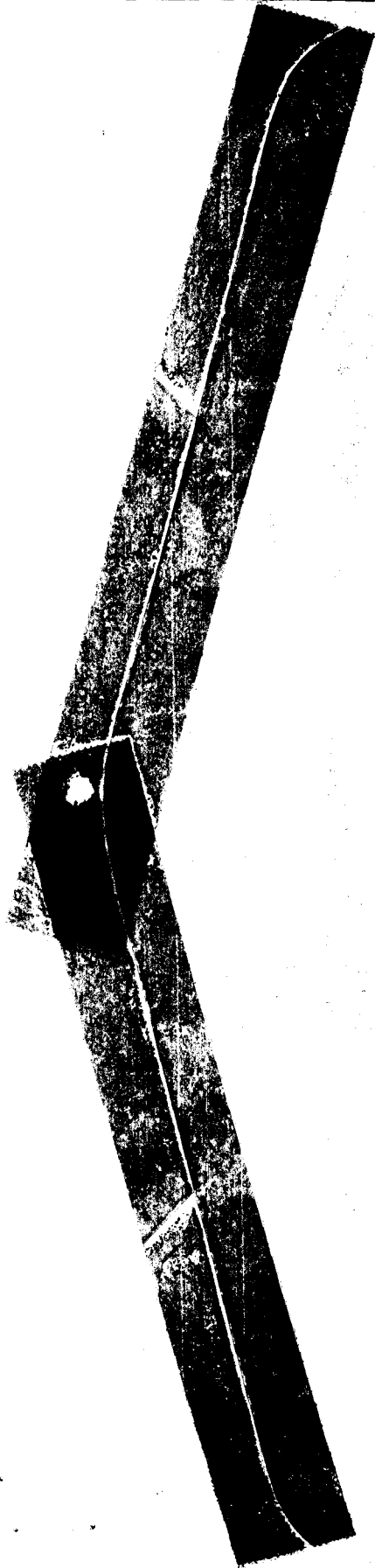


RETURNED TO WRITER  
1312 W  
4-25-77

CERTIFIED

No. 401565

MAIL



STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition  
of

B. P. LESTER, MARK DAVIDS AND  
HAROLD F. BEALE, individually  
and as co-partners, d/b/u  
the firm name and style of  
LESTER, RYONS & COMPANY and  
LESTER, RYONS & CO. LIQUIDATING TRUST

DECISION

for a Redetermination of a Deficiency or  
for Refund of Unincorporated Business Tax  
under Article 23 of the Tax Law for  
the Year 1969.

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B. P. Lester, Mark Davids and Harold F. Beale, individually  
and as co-partners, d/b/u the firm name and style of Lester, Ryons  
& Company, and Lester, Ryons & Co. Liquidating Trust, 453 South  
Spring Street, Los Angeles, California 90013, filed a petition  
under sections 689 and 722 of the Tax Law for a redetermination  
of a deficiency of unincorporated business tax under Article 23  
of the Tax Law, for the year 1969.

A formal hearing was duly held on April 8, 1975, at the offices  
of the State Tax Commission, Two World Trade Center, New York,  
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was represented by J. Kenneth Thompson, Esq. The Income Tax Bureau  
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II. If said gain is subject to unincorporated business tax, may the amount of the gain realized be reduced by the amount of dues, assessments and other payments made by petitioner to maintain the seat?

FINDINGS OF FACT

1. On January 29, 1973, the Income Tax Bureau issued a Statement of Audit Changes against B. P. Lester, Mark Davids and Harold F. Beale, individually and as co-partners, d/b/u the firm name and style of Lester, Ryons & Company, imposing New York State unincorporated business tax liability for the year 1969 in the amount of \$12,529.92, plus interest of \$2,096.26, for a total of \$14,626.18. A Notice of Deficiency for said amounts was also issued on January 29, 1973, under File No. P/S - 3897.

2. B. P. Lester, Mark Davids and Harold F. Beale, individually and as co-partners, d/b/u the firm name and style of Lester, Ryons & Company, and Lester, Ryons & Co. Liquidating Trust, filed a petition for a redetermination of said deficiency.

ISSUES

- I. Whether a California based securities broker and dealer, which owned a seat on the New York Stock Exchange, but had no offices or employees in this state, and transacted its business on the Exchange through New York correspondents, is subject to unincorporated business tax on the gain from the sale of such seat.
- II. If said gain is subject to unincorporated business tax, may the amount of the gain realized be reduced by the amount of dues, assessments and other payments made by petitioner to maintain the seat?

FACTS OF CASE

1. On January 29, 1937, the Income Tax Bureau issued a summons of Audit against E. F. Lester, Mark Davis and Harold T. Beale, individually and as co-partners, d/b/a the firm name and style of Lester, Brown & Co., Inc., a New York corporation, for the year 1936. The amount of \$12,520.32, the interest of \$4,000.00, for a total of \$16,520.32. A notice of delinquency for said amount was also issued on January 29, 1937, under File No. 142-3617.
2. E. F. Lester, Mark Davis and Harold T. Beale, individually and as co-partners, d/b/a the firm name and style of Lester, Brown & Co., Inc., a New York corporation, filed a petition for a redetermination of said delinquency.

3. Lester, Ryons & Company, was a securities broker and dealer with its principal office in Los Angeles, California. It had no offices or employees in New York State and prior to 1969 it filed no tax returns with New York State. It ceased doing business on October 31, 1969. It had thirty general partners at that time. Its assets and affairs are now managed by the Lester, Ryons & Co. Liquidating Trust.

4. Lester, Ryons & Company had purchased a membership or "seat" on the New York Stock Exchange in 1951. Said seat was originally held in the name of one of its general partners, B. P. Lester and was transferred to the name of another general partner, Sigurd R. Wendlin, Jr., on January 2, 1969. The seat was subsequently sold to an outsider on October 31, 1969, for the price of \$350,000.00.

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The petitioners claim that the above amounts, which total \$173,595.98, should be added to the Federal cost basis of the seat in determining the New York cost basis for unincorporated business tax purposes.

#### CONCLUSIONS OF LAW

A. That the seat on the New York Stock Exchange was an asset of Lester, Ryons & Company (Matter of Gregory & Sons, State Tax Commission, June 19, 1972; Matter of Freiday & Co., State Tax Commission, December 1, 1972.)

On the basis of the information received from the  
authorities, it was found that the person in question  
was born on 1922, in the town of ...

The person in question was born in the town of ...  
in the year 1922, and was the son of ...

It was found that the person in question was born in the town of ...  
in the year 1922, and was the son of ...

The person in question was born in the town of ...  
in the year 1922, and was the son of ...

It was found that the person in question was born in the town of ...  
in the year 1922, and was the son of ...

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in the year 1922, and was the son of ...

It was found that the person in question was born in the town of ...  
in the year 1922, and was the son of ...

The person in question was born in the town of ...  
in the year 1922, and was the son of ...

B. That said asset was intangible personal property which had a business situs in New York State and the gain on the sale thereof is subject to taxation by New York State. (People ex rel. Whitney v. Graves, 299 U.S. 366 (1937)).

C. That the gain on the sale of the seat constituted unincorporated business gross income within the meaning and intent of section 705(a) of the Tax Law and is subject to unincorporated business tax as imposed by section 701(a) of the Tax Law.

D. That petitioners have failed to prove that the payments totalling \$173,595.98 made in connection with the maintenance of the seat were capital expenditures which would increase the tax basis of the seat and reduce the amount of the gain.

E. That the petition is hereby denied.

DATED: Albany, New York  
April 26, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER

2. That said asset was transferred to personal property which had a business situs in New York State and the gain on the sale thereof is subject to taxation by New York State. (People ex rel. Whitney v. Graves, 39 N.Y.2d 366 (1972)).

3. That the gain on the sale of the asset constituted unincorporated business gross income within the meaning and intent of section 601(a) of the Tax Law and is subject to taxation. Business tax as imposed by section 601(a) of the Tax Law.

4. That said defendant has failed to prove that the payments totaling \$10,000 were in connection with the maintenance of the asset were capital expenditures which would increase the tax basis of the asset and reduce the amount of the gain. That the deduction is hereby denied.

STATE TAX COMMISSION

STATE OF NEW YORK

ALBANY, N.Y.

TESTED

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6007 18810