

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

PAUL J. NOWLAND & CO.

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 ~~(x)~~ ~~1967~~ ~~(x)~~ 1967. :

State of New York
County of Albany

John Huhn , 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 1st day of September , 1977, ~~he~~ served the within
Notice of Decision by (certified) mail upon Paul J. Nowland & Co.

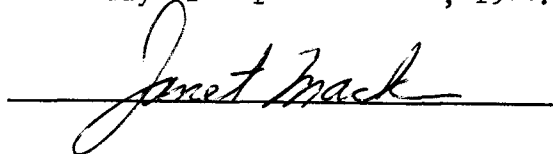
(~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
Paul J. Nowland & Co.
as follows: c/o Paul J. Nowland
Campbell Road
Greenville, Delaware 19807

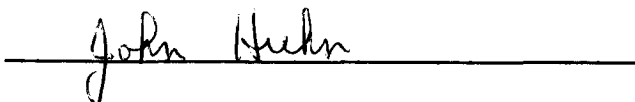
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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

1st day of September , 1977.





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

PAUL J. NOWLAND & CO.

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)~~ 1967. :

State of New York
County of Albany

John Huhn , 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 1st day of September , 1977, ~~he~~ served the within
Notice of Decision by (certified) mail upon Leonard S. Togman

(representative of) the petitioner in the within proceeding,

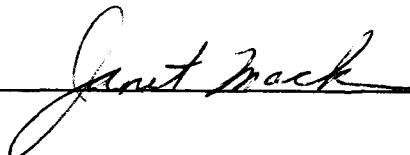
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Leonard S. Togman
Potter Anderson & Corroon
Delaware Trust Building
Wilmington, Delaware 19801

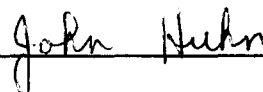
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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

1st day of September , 1977.







STATE OF NEW YORK
STATE TAX COMMISSION
TAX APPEALS BUREAU
ALBANY, NEW YORK 12227

September 1, 1977

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

**Paul J. Nowland & Co.
c/o Paul J. Nowland
Campbell Road
Greenville, Delaware 19807**

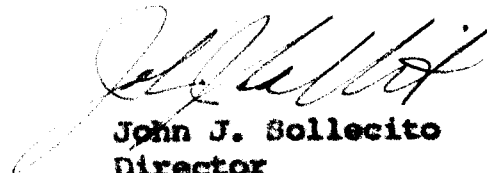
Gentlemen:

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 **(b) 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,


**John J. Sollecito
Director
Tax Appeals Bureau**

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
PAUL J. NOWLAND & CO.	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business Tax	:	
under Article 23 of the Tax Law for the	:	
Year 1967.	:	

Paul J. Nowland & Co., c/o Paul J. Nowland, Campbell Road, Greenville, Delaware 19807, filed a petition for redetermination of a deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the year 1967. (File No. 01884).

A formal hearing was held before Nigel G. Wright, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York, on March 10, 1972 at 11:00 A.M. The petitioner appeared by Potter, Anderson & Carroon, Esqs. (Leonard S. Togman, Esq., of counsel). The Income Tax Bureau appeared by Saul Heckelman, Esq. (Francis X. Boylan, Esq., of counsel).

ISSUES

I. Whether the petitioner, who maintained no office in the State and transacted no business therein, is liable for New York State unincorporated business tax.

II. Whether the gain on the sale of a New York Stock Exchange seat owned by a nonresident partner of a Delaware partnership is attributable to the partnership and, therefore, subject to New York unincorporated business tax.

FINDINGS OF FACT

1. On October 15, 1971, the Income Tax Bureau issued a Statement of Audit Changes against the petitioner imposing unincorporated business tax for the year 1967 in the amount of \$11,280.00, plus interest of \$2,368.80, for a total due of \$13,648.80. Accordingly, it issued a Notice of Deficiency therefor. The Statement of Audit Changes stated: "The full amount of gain realized on the sale of the New York Stock Exchange Seat represents taxable income subject to the New York State unincorporated business tax, since it was an asset used in your business with a situs in New York." The petitioner timely filed a petition for redetermination of said deficiency.

2. The petitioner, Paul J. Nowland & Co., was a Delaware partnership consisting of Paul J. Nowland & Wilma E. Tull, as brokers and dealers in the security and commodity business. The partnership maintained its principal place of business in Wilmington, Delaware. In 1965, the original partnership agreement was amended to include Peter Allison, Henry P. Burrows, Jr. and Philip J. Nowland.

3. The partnership never maintained any office in the State of New York. At no time did its partners or employees transact any business in the State of New York.

4. Paul J. Nowland, a senior member of the partnership, acquired a seat on the New York Stock Exchange in 1952. He contributed the use of his Stock Exchange seat to the partnership. In accordance with the Rules of the Stock Exchange, Mr. Paul J. Nowland's seat was subordinated to the rights of creditors of the partnership in the event of the transfer of said seat.

5. The partnership owned a seat on the American Stock Exchange. This seat was abandoned when the partnership was dissolved on June 30, 1967. At the time of dissolution of the partnership, the New York Stock Exchange seat was returned to Mr. Paul J. Nowland.

6. The partnership used a correspondent New York brokerage firm to transact business on the New York Stock Exchange and American Stock Exchange.

7. None of the partners nor any of the employees of the partnership transacted any business on either the New York Stock Exchange or the American Stock Exchange on behalf of the partnership, from 1965 to the date of the dissolution of the partnership in 1967.

8. Paul J. Nowland sold his New York Stock Exchange seat on July 13, 1967, and realized a gain of \$312,000.00. He filed a nonresident return for the year 1967 and subsequently paid the tax on the gain realized from the sale of said seat.

CONCLUSIONS OF LAW

A. That the New York Stock Exchange seat of Paul J. Nowland never became the property of the partnership; that it was merely a capital contribution by him to the partnership and was returned to him at or prior to the dissolution of the partnership.

B. That the petitioner-partnership did not transact any business within the State of New York in 1967 or prior thereto.

C. That the gain on the sale of the New York Stock Exchange seat by Paul J. Nowland, a nonresident, was not attributable to the partnership nor did it constitute the liquidation of a New York partnership, since the partnership never conducted business within the State of New York.

D. That the partnership was not liable for unincorporated business tax in 1967.

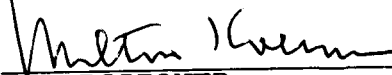
E. That the Statement of Audit Changes and Notice of Deficiency issued to Paul J. Nowland & Co. are erroneous and are hereby cancelled.

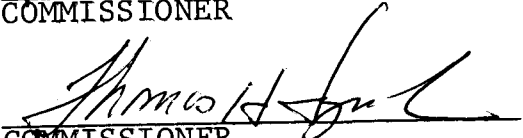
DATED: Albany, New York

September 1, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER