

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
FREDERICK C. WHALEY and E. HELEN WHALEY,  
individually and as co-partners of  
F. C. WHALEY & COMPANY  
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) or Period (x) 1970.:  
\_\_\_\_\_

AFFIDAVIT OF MAILING

State of New York  
County of Albany

Bruce Batchelor , 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 7th day of June , 1977, she served the within  
Notice of Decision by (certified) mail upon Frederick C. Whaley &  
E. Helen Whaley (~~representative of~~) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Frederick C. Whaley & E. Helen Whaley  
Individually & as co-partners of  
F. C. Whaley & Company  
Post Office Box G  
Syosset, New York 11791  
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~~  
~~of the~~) 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

7th day of June , 1977

Bruce Batchelor

Janet Mac

STATE OF NEW YORK  
STATE TAX COMMISSION

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Tax Law for the Year (s) ~~xxxx~~ Period (x) 1970. :

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State of New York  
County of Albany

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~~he~~ is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 7th day of June, 1977, ~~he~~ served the within  
Notice of Decision by (certified) mail upon Gary Lakin  
(representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Gary Lakin, Esq.  
6 East 43rd Street  
New York, New York  
and by depositing same enclosed in a postpaid properly addressed wrapper in a  
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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

June 7, 1977

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

Frederick C. Whaley & E. Helen Whaley  
Individually & as co-partners of  
F. C. Whaley & Company  
Post Office Box G  
Syosset, New York 11791

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:

## STATE TAX COMMISSION

## DECISION

A formal hearing was held before Michael Alexander, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on July 30, 1976 at 9:00 A.M. Petitioners appeared by Gary Lakin, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Arthur Rosen, Esq. of counsel).

ISSUE

Whether the gain on the sale of a seat on the New York Stock Exchange by its owner can be attributed to the partnership, of which the owner of the seat was a partner, or to him individually, for purposes of unincorporated business tax liability.

FINDINGS OF FACT

1. Petitioner, F. C. Whaley & Co., filed a New York State Partnership return for the year 1970. The gain on the sale of a New York Stock Exchange seat was not mentioned therein.

2. On August 27, 1973, the Income Tax Bureau issued a Statement of Audit Changes to Frederick C. Whaley and E. Helen Whaley, individually and as co-partners doing business as F. C. Whaley & Company, stating unincorporated business tax due in the sum of \$712.05, plus interest of \$101.09 to that date. The basis for the tax was stated to be the gain from the sale or disposition of a stock exchange seat which was an asset of the business. Accordingly, a Notice of Deficiency dated August 27, 1973 was issued.

3. Petitioner, Frederick C. Whaley, purchased a seat on the New York Stock Exchange on April 7, 1932 for \$126,753.16. He used that seat in business as a Stock Specialist and as a partner in the partnership of F. C. Whaley & Company, until his

retirement on July 1, 1968. The sole partners in that partnership for the years 1963 through 1970 were petitioners, Frederick C. Whaley and his wife, E. Helen Whaley.

4. During the years 1963 through 1970, the only salary paid by the partnership was paid to petitioner, Frederick C. Whaley. During the years 1967 through 1970, the partnership balance sheets do not indicate the seat as an asset of the partnership. The partnership did pay registration fees and dues on the stock exchange seat through 1968, but did not list such deductions for the years 1969 and 1970.

5. After petitioner, Frederick C. Whaley's retirement, the returns of F. C. Whaley & Company showed minimal income from commissions and no unincorporated business tax due for 1969 and 1970.

6. On July 31, 1970, the stock exchange seat was sold for \$148,000.00 and the resulting capital gain was reported on the joint personal income tax returns of petitioners, Frederick C. Whaley and E. Helen Whaley.

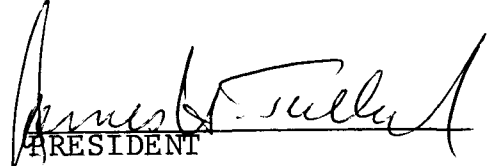
#### CONCLUSIONS OF LAW

A. That the stock exchange seat owned by petitioner, Frederick C. Whaley, was not being used in the business of the partnership F. C. Whaley & Company at the time of the sale, nor was it being used in business by petitioners, Frederick C. Whaley and E. Helen Whaley, at the time of the sale.

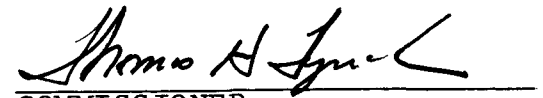
B. That petitioners are not subject to unincorporated business tax in 1970 on the sale by Frederick C. Whaley of the stock exchange seat and, therefore, the deficiency is erroneous in its entirety and is cancelled.

DATED: Albany, New York  
June 7, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER



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

June 7, 1977

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

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Inquiries concerning the computation of tax  
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Very truly yours,

Enc.

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

cc: Petitioner's Representative:

Taxing Bureau's Representative:



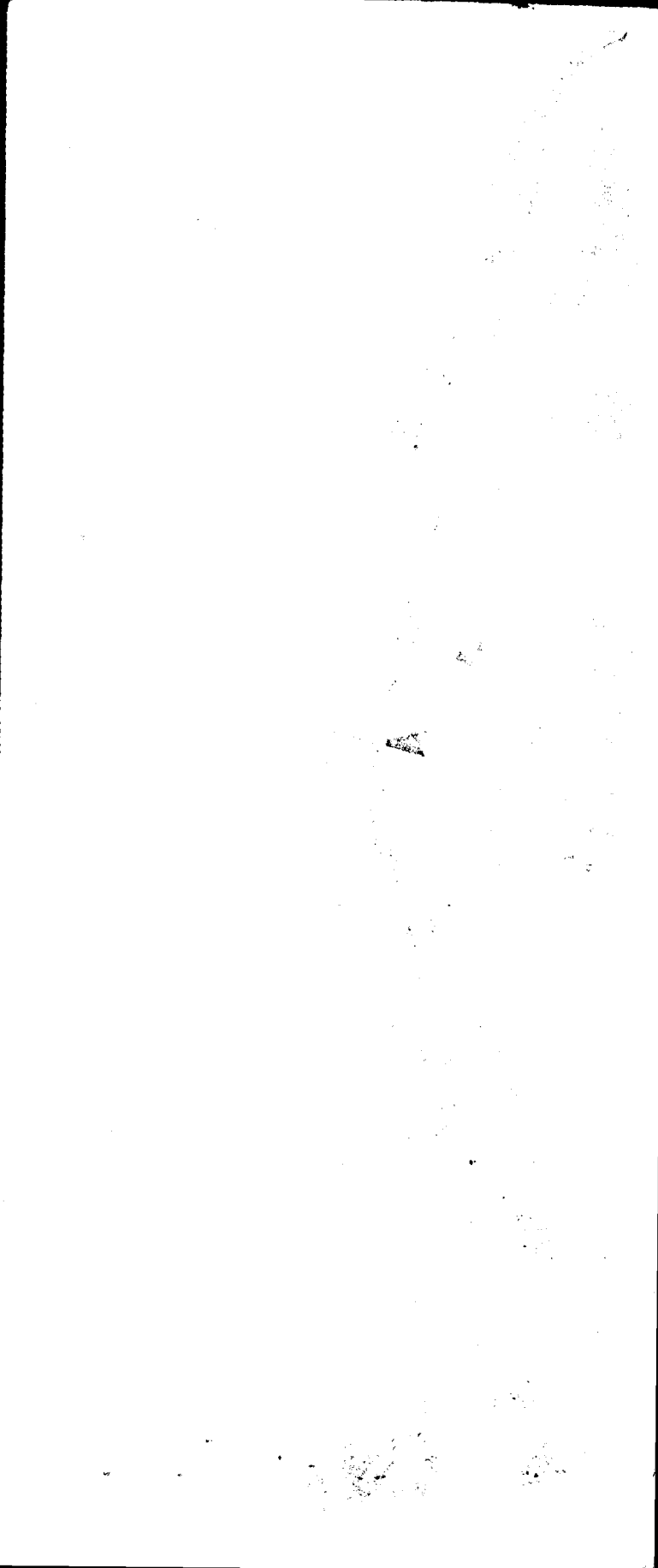
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STATE OF NEW YORK  
Department of Taxation and Finance  
TAX APPEALS BUREAU

STATE CAMPUS  
ALBANY, N. Y. 12227



Gary Lakin, Esq.  
6 East 43rd Street  
New York, New York



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under Article 23 of the Tax Law for the	:	
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Petitioners, Frederick C. Whaley and E. Helen Whaley, Post Office Box G, Syosset, New York 11791, individually and as co-partners of F. C. Whaley & Company, 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 1970. (File No. 00001193).

A formal hearing was held before Michael Alexander, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on July 30, 1976 at 9:00 A.M. Petitioners appeared by Gary Lakin, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Arthur Rosen, Esq. of counsel).

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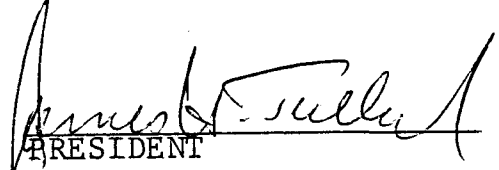
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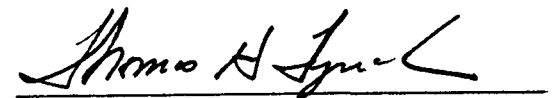
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