

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

BONNER and GREGORY

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) 16-A of the
Tax Law for the Year(s) ~~XXXXXX~~ 1952,
1953, 1954 and for the Period

January 1, 1955 to April 30, 1955.

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 6th day of April, 1979, ~~XX~~ he served the within

Notice of Determination by ~~(certified)~~ mail upon Bonner and Gregory

~~XXXXXXXXXXXX~~ the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed

as follows: Bonner and Gregory

72 Wall Street

New York, New York

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 ~~XXXXXXXXXXXX~~
~~of the~~ petitioner herein and that the address set forth on said wrapper is the
last known address of the ~~XXXXXXXXXXXX~~ petitioner.

Sworn to before me this

6th day of April, 1979

Marilyn J. Papineau

John Huhn

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
BONNER and GREGORY

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) 16-A of the :
Tax Law for the Year(s) ~~XXXXXX~~ 1952, :
1953, 1954 and for the Period

January 1, 1955 to April 30, 1955.
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 6th day of April , 1979 , He served the within
Notice of Determination by ~~(certified)~~ mail upon Biller & Snyder, CPA's

(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Biller & Snyder, CPA's
75 Maiden Lane
New York, New York 10038

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

6th day of April , 1979.

Marilyn J. Papmear

John Huhn



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

ADDRESS YOUR REPLY TO

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

April 6, 1979

TELEPHONE: (518) 457-1723

**Bonner and Gregory
72 Wall Street
New York, New York**

Gentlemen:

Please take notice of the Default Order
of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to
Section ~~190~~ **386(j)** of the Tax Law, any
proceeding in court to review an adverse deci-
sion must be commenced within **90 days**
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,

MICHAEL ALEXANDER

SUPERVISING TAX HEARING OFFICER

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
BONNER and GREGORY	:	DETERMINATION
for Revision of a Determination or for	:	
Refund of Unincorporated Business Tax	:	
under Article 16-A of the Tax Law for	:	
the Years 1952, 1953, 1954 and for the	:	
Period January 1, 1955 to April 30,	:	
1955.	:	
	:	

Applicant, Bonner and Gregory, 72 Wall Street, New York, New York, filed an application for revision of a determination or for refund of unincorporated business tax under Article 16-A of the Tax Law for the years 1952, 1953, 1954 and for the period January 1, 1955 to April 30, 1955 (File No. 01915).

A formal hearing was held before Francis X. Boylan, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York, on November 12 and 13, 1969. Applicant appeared by Biller and Snyder, CPA's (Aaron Nasper, Martin Wallace and Philip F. Rauch, of counsel). The Income Tax Bureau appeared by Edward H. Best, Esq. (Alexander Weiss, Esq., of counsel).

ISSUES

I. Whether income from cash and securities in partners' subordinated capital accounts was subject to unincorporated business tax.

II. Whether interest payments made in connection with borrowed cash or securities constituted interest on partners' capital and, thus, was not deductible by applicant for unincorporated business tax purposes.

FINDINGS OF FACT

1. Applicant, Bonner and Gregory, a partnership during each of the taxable years involved, was engaged in business as a securities broker in the State of New York.

2. Certain general partners of the firm borrowed cash and securities from persons who were not members or employees of the firm, who had agreed to subordinate their liens to claims of the partnership creditors. The borrowed assets were then brought into the partnership through the partners' individual accounts. The cash and securities were considered capital of the firm under the partnership agreement and under Rule 325 of the New York Stock Exchange, which required an amount of capital sufficient to meet the required minimum Debt to Net Capital Ratio.

3. Although applicant paid interest on the borrowed assets directly to the outside lenders as a convenience, such interest was charged to the accounts of the partners.

4. On April 12, 1962, notices of additional assessment were issued to Bonner and Gregory by the Income Tax Bureau. Prior to being revised, the assessments provided as follows:

Year	<u>1952</u>	<u>1953</u>	<u>1954</u>	Jan. 1, 1955 to <u>April 30, 1955</u>
Assessment No.	FA94119	FA94120	FA94121	FA94122
Total Additional Tax	\$ 934.32	\$ 684.74	\$ 1,616.85	\$ 418.95
<u>DESCRIPTION</u>				
A. Disallowed travel and entertainment	\$ 2,000.00	\$ 2,200.00	\$ 4,000.00	\$ 1,200.00
B. Dividends under- stated	\$ 112.00	-----	-----	-----
C. Salary disallowed	-----	-----	\$ 2,170.00	\$ 900.00
D. Deduction for partner's service disallowed	-----	-----	\$ 2,000.00	-----
E. Interest, dividends and capital gains and/or losses omitted	\$21,011.61	\$22,334.81	\$37,830.37	\$ 6,445.70
F. Interest expense reduced to eliminate payment to member partners, con- sidered to be a distri- bution of profits	\$30,065.40	\$26,330.92	\$29,251.13	\$10,992.28

5. Applicant did not contest Items "A" through "D". On December 26, 1962, applicant filed an Application for Revision or Refund of Unincorporated Business Taxes on Form IT-113. On April 23, 1965, applicant was notified that the notices of additional assessment were revised in accordance with Shearson-Hamhill & Co. v. State Tax Commission (15 N.Y. 2d 608 aff'g Supreme Ct. A.D. 3rd Dept., July 15,

1963), in which interest, dividends and capital gains and/or losses (all of which relate to Item "E") were excludable from the computation of unincorporated business tax liability. On July 1, 1965, applicant filed an application demanding that a hearing be held as a result of its prior application having been denied in part on April 23, 1965.

6. The sole remaining issue pertains to Item "F", interest expenses reduced to eliminate payment to member partners considered a distribution of profits. Applicant contended that the interest payments were deductible as interest paid on the debt of the partnership and were an ordinary and necessary business expense for unincorporated business tax purposes.

CONCLUSIONS OF LAW

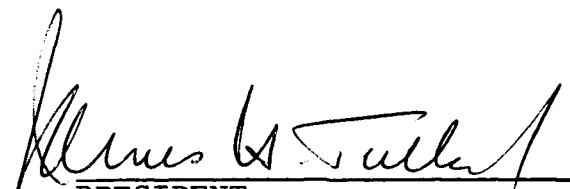
A. That the income from interest, dividends and capital gains and/or losses derived from the subordinated "capital" accounts of partners in applicant's brokerage firm (used as security for partnership creditors and capital contributions) was not subject to unincorporated business tax (Shearson-Hamill & Co. v. State Tax Commission, 15 N.Y. 2d 608, aff'g Supreme Ct. A.D. 3rd Dept.).

B. That the interest payments on the borrowed securities or cash constituted payment of interest on partners' capital under Article 12 of the Unincorporated Business Income Tax Regulations (Article 16-A of the Tax Law) and were not deductible by applicant for unincorporated business tax purposes.

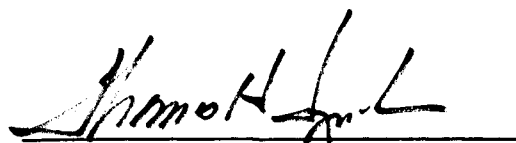
C. That the application of Bonner and Gregory is granted to the extent of allowing the interest dividends and capital gains and/or losses previously omitted from the partnership return, but is in all other respects denied.

DATED: Albany, New York
April 6, 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER



New York State Department of
TAXATION and FINANCE
TAX APPEALS BUREAU

TO Berthlyn Davis

No better address.

BONNER AND GREGORY

May 1, 1979

Michael Alexander

FORMAL HEARINGS

TA-26 (4-76) 25M

STATE OF NEW YORK

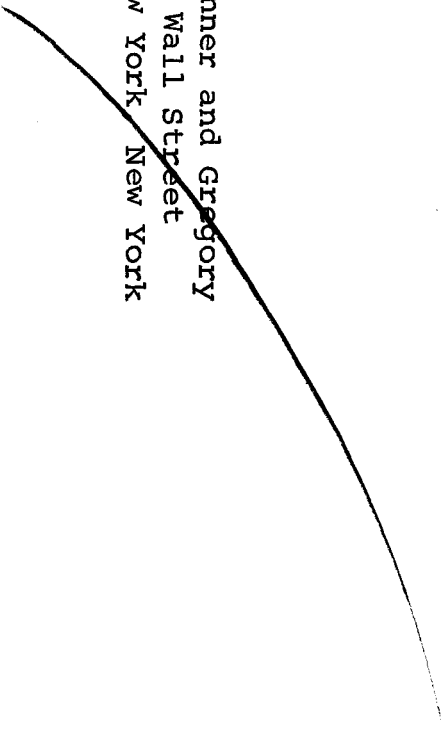
Department of Taxation and Finance

TAX APPEALS BUREAU

STATE CAMPUS

ALBANY, N. Y. 12227

Bonner and Gregory
72 Wall Street
New York New York





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

ADDRESS YOUR REPLY TO

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

April 6, 1979

TELEPHONE: (518) 457-1723

Bonner and Gregory
72 Wall Street
New York, New York

Gentlemen:

Please take notice of the Default Order
of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to
Section(s) ^{XX} 386(j) of the Tax Law, any
proceeding in court to review an adverse deci-
sion must be commenced within 90 days
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,

MICHAEL ALEXANDER

SUPERVISING TAX HEARING OFFICER

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
BONNER and GREGORY	:	DETERMINATION
for Revision of a Determination or for	:	
Refund of Unincorporated Business Tax	:	
under Article 16-A of the Tax Law for	:	
the Years 1952, 1953, 1954 and for the	:	
Period January 1, 1955 to April 30,	:	
1955.	:	

Applicant, Bonner and Gregory, 72 Wall Street, New York, New York, filed an application for revision of a determination or for refund of unincorporated business tax under Article 16-A of the Tax Law for the years 1952, 1953, 1954 and for the period January 1, 1955 to April 30, 1955 (File No. 01915).

A formal hearing was held before Francis X. Boylan, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York, on November 12 and 13, 1969. Applicant appeared by Biller and Snyder, CPA's (Aaron Nasper, Martin Wallace and Philip F. Rauch, of counsel). The Income Tax Bureau appeared by Edward H. Best, Esq. (Alexander Weiss, Esq., of counsel).

ISSUES

I. Whether income from cash and securities in partners' subordinated capital accounts was subject to unincorporated business tax.

II. Whether interest payments made in connection with borrowed cash or securities constituted interest on partners' capital and, thus, was not deductible by applicant for unincorporated business tax purposes.

FINDINGS OF FACT

1. Applicant, Bonner and Gregory, a partnership during each of the taxable years involved, was engaged in business as a securities broker in the State of New York.

2. Certain general partners of the firm borrowed cash and securities from persons who were not members or employees of the firm, who had agreed to subordinate their liens to claims of the partnership creditors. The borrowed assets were then brought into the partnership through the partners' individual accounts. The cash and securities were considered capital of the firm under the partnership agreement and under Rule 325 of the New York Stock Exchange, which required an amount of capital sufficient to meet the required minimum Debt to Net Capital Ratio.

3. Although applicant paid interest on the borrowed assets directly to the outside lenders as a convenience, such interest was charged to the accounts of the partners.

4. On April 12, 1962, notices of additional assessment were issued to Bonner and Gregory by the Income Tax Bureau. Prior to being revised, the assessments provided as follows:

Year	<u>1952</u>	<u>1953</u>	<u>1954</u>	Jan. 1, 1955 to <u>April 30, 1955</u>
Assessment No.	FA94119	FA94120	FA94121	FA94122
Total Additional Tax	\$ 934.32	\$ 684.74	\$ 1,616.85	\$ 418.95
<u>DESCRIPTION</u>				
A. Disallowed travel and entertainment	\$ 2,000.00	\$ 2,200.00	\$ 4,000.00	\$ 1,200.00
B. Dividends understated	\$ 112.00	-----	-----	-----
C. Salary disallowed	-----	-----	\$ 2,170.00	\$ 900.00
D. Deduction for partner's service disallowed	-----	-----	\$ 2,000.00	-----
E. Interest, dividends and capital gains and/or losses omitted	\$21,011.61	\$22,334.81	\$37,830.37	\$ 6,445.70
F. Interest expense reduced to eliminate payment to member partners, considered to be a distribution of profits	\$30,065.40	\$26,330.92	\$29,251.13	\$10,992.28

5. Applicant did not contest Items "A" through "D". On December 26, 1962, applicant filed an "Application for Revision or Refund of Unincorporated Business Taxes" on Form IT-113. On April 23, 1965, applicant was notified that the notices of additional assessment were revised in accordance with Shearson-Hammill & Co. v. State Tax Commission (15 N.Y. 2d 608 aff'g Supreme Ct. A.D. 3rd Dept., July 15,

1963), in which interest, dividends and capital gains and/or losses (all of which relate to Item "E") were excludable from the computation of unincorporated business tax liability. On July 1, 1965, applicant filed an application demanding that a hearing be held as a result of its prior application having been denied in part on April 23, 1965.

6. The sole remaining issue pertains to Item "F", interest expenses reduced to eliminate payment to member partners considered a distribution of profits. Applicant contended that the interest payments were deductible as interest paid on the debt of the partnership and were an ordinary and necessary business expense for unincorporated business tax purposes.

CONCLUSIONS OF LAW

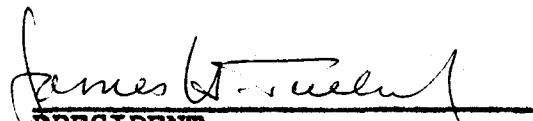
A. That the income from interest, dividends and capital gains and/or losses derived from the subordinated "capital" accounts of partners in applicant's brokerage firm (used as security for partnership creditors and capital contributions) was not subject to unincorporated business tax (Shearson-Hamill & Co. v. State Tax Commission, 15 N.Y. 2d 608, aff'g Supreme Ct. A.D. 3rd Dept.).


B. That the interest payments on the borrowed securities or cash constituted payment of interest on partners' capital under Article 12 of the Unincorporated Business Income Tax Regulations (Article 16-A of the Tax Law) and were not deductible by applicant for unincorporated business tax purposes.

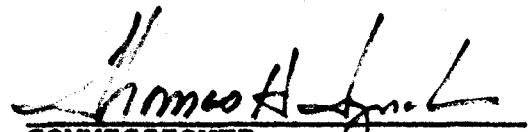
C. That the application of Bonner and Gregory is granted to the extent of allowing the interest dividends and capital gains and/or losses previously omitted from the partnership return, but is in all other respects denied.

DATED: Albany, New York
April 6, 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER