

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

L. Davis Trucking Company :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of
Unincorporated Business Tax :
under Article 23 of the Tax Law
for the Year 1972. :

State of New York

County of Albany

Jay Vredenburg, 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 4th day of April, 1980, he served the within notice of Decision by certified mail upon L. Davis Trucking Company, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

L. Davis Trucking Company
17 Marshall Court
Great Neck, NY 11021

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

Sworn to before me this
4th day of April, 1980.

Joanne Krupp

[Signature]

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
L. Davis Trucking Company :
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of
Unincorporated Business Tax :
under Article 23 of the Tax Law
for the Year 1972. :

AFFIDAVIT OF MAILING

State of New York
County of Albany

Jay Vredenburg, 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 4th day of April, 1980, he served the within notice of Decision by certified mail upon Frederick Doppelt, Esq. the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. Frederick Doppelt, Esq.
103 Park Ave.
New York, NY 10017

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
4th day of April, 1980.

Janne Krapp

Jay Vredenburg

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

April 4, 1980

L. Davis Trucking Company
17 Marshall Court
Great Neck, NY 11021

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(s) 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:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Frederick Doppelt, Esq.
103 Park Ave.
New York, NY 10017
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
L. DAVIS TRUCKING CO.	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Unincorporated Business Tax under	:	
Article 23 of the Tax Law for the Year 1972.	:	

Petitioner, L. Davis Trucking Co., 17 Marshall Court, Great Neck, New York 11021, 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 1972 (File No. 18651).

A small claims hearing was held before Harry Huebsch, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on November 30, 1978 at 1:15 P.M. Petitioner appeared by Frederick Doppelt, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (William Fox, Esq., of counsel).

ISSUES

- I. Whether petitioner properly deducted interest expenses on its 1972 Partnership Tax Return.
- II. Whether petitioner was entitled to an allowance for partner's services on its 1972 Partnership Tax Return.

FINDINGS OF FACT

1. Petitioner, L. Davis Trucking Co., timely filed a New York State Partnership Tax Return for 1972, on which it deducted interest expense of \$2,160.00 and took an allowance for partner's personal services in the amount of \$4,494.00.

2. The Income Tax Bureau issued a Statement of Audit Changes against petitioner for 1972 on which the Income Tax Bureau partially disallowed a deduction for interest expense and denied an allowance for partner's personal services on the grounds that the partnership was being operated solely by a fiduciary of an estate. On March 28, 1977 the Income Tax Bureau issued a Notice of Deficiency for \$374.65 in unincorporated business tax, plus \$111.01 in interest, for a total due of \$485.66.

3. The Income Tax Bureau also disallowed a deduction for New York State franchise tax on a related corporation which petitioner conceded to and which is not at issue.

4. Rose Davis was a 10 percent partner and her son Sidney Davis was a 90 percent partner in L. Davis Trucking Co. for years prior to the year at issue. In 1964, Rose Davis made a non-interest bearing loan of \$24,000.00 to Sidney Davis under a written agreement for a period of ten years. Sidney Davis gave the money to his wife Anna Davis as a gift. Anna Davis loaned the money to L. Davis Trucking Co. at the rate of 9 percent per annum. In 1972 the partnership deducted the interest expense paid to Anna Davis in the amount of \$2,160.00. Sidney Davis died on February 25, 1971 and the loan was repaid by his estate in 1974 per the written agreement.

6. Petitioner claimed that the \$24,000.00 gift from Sidney Davis to Anna Davis was made for estate planning purposes.

7. When Sidney Davis died, his wife Anna Davis who was appointed executrix of his estate, took over the operation of L. Davis Trucking Co.

8. Rose Davis was not active in the business affairs of the partnership.

CONCLUSIONS OF LAW

A. That transactions between the family members were in substance an attempt to reduce or reallocate income and as such do not support a proper interest deduction for the partnership under section 163 of the Internal Revenue Code. [Sall v. Smith, 53-1 USTC, ¶9123; TYSON, 3TCM200, Dec. 13784(m)].

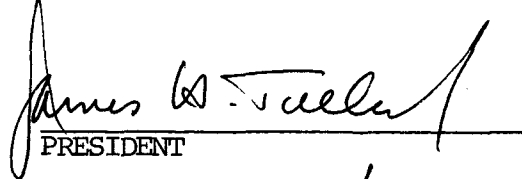
B. That the allowance for partners services claimed on behalf of the Estate of Sidney A. Davis is not a proper deduction on the partnership return of L. Davis Trucking Co. for 1972 under section 708(a) of the Tax Law.


C. That the petition of L. Davis Trucking Co. is denied and the Notice of Deficiency issued March 28, 1977 is sustained, together with such additional interest as may be lawfully owing.

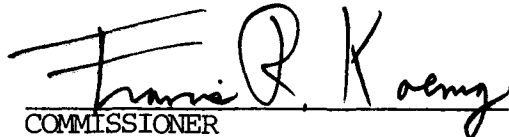
DATED: Albany, New York

APR 4 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER