

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Mattlielli & 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 23rd day of May, 1980, he served the within notice of Decision by certified mail upon Mattlielli & Company, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mattlielli & Company
c/o Irving Kushel
Malverne, NY 11565

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
23rd day of May, 1980.

Joanne Knapp

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Mattlielli & 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 23rd day of May, 1980, he served the within notice of Decision by certified mail upon Irving Kushel 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. Irving Kushel
38 Atlas Ave.
Malverne, NY 11565

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
23rd day of May, 1980.

Joanne Knapp

J. Vredenburg

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

May 23, 1980

Mattlielli & Company
c/o Irving Kushel
38 Atlas Ave.
Malverne, NY 11565

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
Irving Kushel
38 Atlas Ave.
Malverne, NY 11565
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
MATTIELLI & COMPANY	:	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, Mattielli & Company, c/o Irving Kushel, Esq., 38 Atlas Avenue, Malverne, New York 11565, filed a petition for redetermination of a deficiency or for refund of unincorporated business tax for the year 1972 (File No. 14302).

The petitioner, Mattielli & Company, waived a formal hearing in this matter and requested the Tax Commission to issue a decision based upon the record as it is presently constituted.

ISSUES

- I. Whether or not the gain on the sale of a stock exchange seat is subject to unincorporated business tax.
- II. Whether or not the stock exchange seat was a partnership asset.
- III. Whether the amount received from the sale of the exchange seat should be adjusted to reflect the gain thereon.

FINDINGS OF FACT

1. The partnership of Mattielli & Company was formed pursuant to the Uniform Partnership Act of the State of New York on August 1, 1953. It was engaged in transacting business as brokers, dealers, underwriters, distributors or otherwise, in stocks, bonds and other securities and investments, and in commodities and in foreign exchange. The Partnership Agreement of August 1,

1953 was amended August 3, 1953, May 24, 1954, April 7, 1958, March 5, 1959 and January 3, 1966.

2. The partnership ceased doing business on December 7, 1972 and filed a final partnership and unincorporated business tax return for the year 1972.

3. On March 29, 1976, the Audit Division issued a Statement of Audit Changes against the partnership imposing additional unincorporated business tax due in the amount of \$10,923.41, plus interest of \$2,419.54, for a total of \$13,342.95, and issued a Notice of Deficiency therefor. The petitioner timely filed a petition with respect to said Notice of Deficiency.

4. The Statement of Audit Changes provided, in part:

"The interest paid to the Estate of Louis Mattielli in the amount of \$3,286.67 constitutes a guarantee payment and therefore must be included in payment to partners on line 2, page 4 in arriving at unincorporated business tax for 1972.

It is noted that you ceased doing business as of 12/7/72. Therefore, your exemptions must be prorated. You will be allowed an exemption of \$4,649.27.

The gain on the sale of your N.Y. Stock Exchange Seat, in the amount of \$195,000.00, is subject to the Unincorporated Business Tax, since the seat represents an asset used in your trade or business."

5. The partnership agreement, as last amended in 1966, provided in part that the capital contributions shall be as follows:

<u>"General Partners</u>	<u>Working Capital</u>	<u>Seat Capital</u>	<u>Total</u>
Louis Mattielli	\$10,000.00	\$40,834.00	\$50,834.00
Domenick Mattielli	10,000.00	-----	10,000.00
Frank R. Belmont	5,000.00	-----	5,000.00
William F. Luce	-----	8,166.00	8,166.00
Total	\$25,000.00	\$49,000.00	\$74,000.00"

6. The partnership agreement further provided that William F. Luce was the owner of the membership in the New York Stock Exchange and that the proceeds of the transfer of said membership were to be an asset of the partnership. It also provided that upon the dissolution of the firm or upon the retirement of Luce, he was to exercise one of three options:

"(a) retain his membership and pay to the partnership the amount necessary to purchase another membership, which shall include such transfer and other fees as may be required by the Exchange, or

(b) sell his membership and pay the proceeds over to the partnership, or

(c) transfer his membership for a nominal consideration to a person designated by the partnership and satisfactory to the Board of Governors."

If Luce did not exercise option (a), then the partnership could exercise either option (b) or (c).

Ordinary payments to the New York Stock Exchange in connection with such membership, including extraordinary assessments, if called for by the Exchange, were to be borne by the partnership. The partnership listed the stock exchange seat under the caption "other assets" on the partnership's Statements of Financial Condition.

7. The Stock Exchange seat was sold for \$195,000.00.

8. Louis Mattielli, who had a 83 1/3 percent interest in the Stock Exchange seat, died on July 23, 1971.

9. The petitioner contends that the capital gain on the sale of the seat should be \$44,339.00, computed as follows:

Selling Price		\$195,000.00
<u>Less Cost or Adjusted Basis</u>		
Last sale of seat per N.Y. Stock Exchange		
Bulletin on 7/22/71 - F.M.V. \$170,000.00		
Date of Death of Partner Louis Mattielli - 7/23/71		
Basis per I.R.S. of 83 1/3 interest of Estate in Seat		
(Fair Market Value at date of death)		
83 1/3% x 170,000 =	141,661.00	
Partner William Lucas had 16 2/3% interest		
in seat (cost 1948 - \$54,000.00 for seat)		
Owned 16 2/3% at time of sale in 1972		
Cost Basis (16 2/3% x 54,000) =	<u>9,000.00</u>	
Cost and adjusted basis of seat		<u>150,661.00</u>
Capital gain on sale of seat		\$ 44,339.00

Petitioner concedes that the interest paid to Estate of Louis Mattielli is not a proper deduction from unincorporated business tax income but claims

that the additional unincorporated business tax should be reduced to \$2,637.06 instead of \$10,923.41.

CONCLUSIONS OF LAW

A. That the stock exchange seat at issue was an asset of the partnership since it was listed under the caption "other assets" on the partnership's Statements of Financial Condition and since the proceeds of said sale inured to the benefit of the partnership.

B. That the gain derived from the sale of the seat constituted unincorporated business income under section 705(a) of the Tax Law and as such, was subject to unincorporated business tax under section 701 of the Tax Law.

C. That since the value of the seat pursuant to Finding of Fact "9" was \$150,661.00 and the sale of the seat was \$195,000.00, it is necessary to recompute the gain subject to unincorporated business tax.

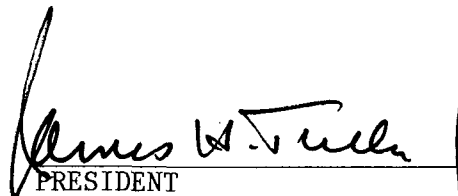
D. That the Audit Division is directed to recompute the additional unincorporated business tax in accordance with Conclusion of Law "C", supra.

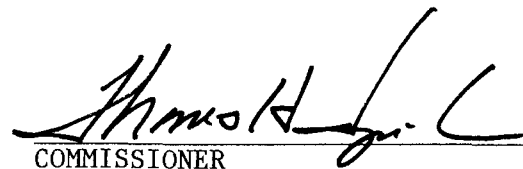
E. That the petition of Mattielli & Company is granted to the extent indicated in Conclusions of Law "C" and "D" and is, in all other respects, denied.

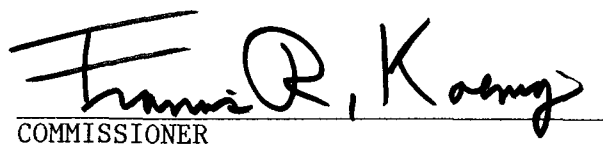
DATED: Albany, New York

MAY 23 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER