

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Whitehouse & Co. :
c/o Kenneth R. McGuire : 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 1967. :

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 11th day of January, 1980, he served the within notice of Decision by certified mail upon Whitehouse & Co., c/o Kenneth R. McGuire, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Whitehouse & Co.
c/o Kenneth R. McGuire
Suite 1113, 150 Broadway
New York, NY 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 petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
11th day of January, 1980.

Joanne Krapp

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Whitehouse & Co. :
c/o Kenneth R. McGuire : 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 1967. :

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 11th day of January, 1980, he served the within notice of Decision by certified mail upon the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Sirs
Edwin A. McGuire & Kenneth R. McGuire
Suite 1113, 150 Broadway
New York, NY 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
11th day of January, 1980.

Joanne Krapp

J. Vredenburg

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

January 11, 1980

Whitehouse & Co.
c/o Kenneth R. McGuire
Suite 1113, 150 Broadway
New York, NY 10038

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
Edwin A. McGuire & Kenneth R. McGuire
Suite 1113, 150 Broadway
New York, NY 10038
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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

Petitioner, Whitehouse & Company, c/o Kenneth R. McGuire, Esq., Suite 1113, 150 Broadway, New York, New York 10038, 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. 01948).

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 May 2, 1973 at 2:30 P.M. Petitioner appeared by Edwin A. McGuire and Kenneth R. McGuire, Esqs. The Income Tax Bureau appeared by Saul Heckelman, Esq. (Solomon Sies, Esq., of counsel).

ISSUE

Whether the deferred gain derived from the sale of a New York Stock Exchange seat was subject to unincorporated business tax, where no principal payments were received either in the year of sale or subsequent thereto.

FINDINGS OF FACT

1. Petitioner, Whitehouse & Company, timely filed a New York State partnership return for 1967, on which it indicated that said return was a "final return".

2. On April 10, 1972, the Income Tax Bureau issued a Notice of Deficiency asserting unincorporated business tax of \$17,120.00, plus interest of \$4,096.30, for a total of \$21,216.30. Said Notice was issued on the grounds that the sale of a stock exchange seat was subject to New York unincorporated business tax.

3. Petitioner was a stockbrokerage firm which carried on business solely within New York State. The December 31, 1953 Articles of Co-Partnership provided that partner Berton J. Delmhorst would contribute \$20,000.00 plus the use of his membership in the New York Stock Exchange ("Exchange") to said partnership. Petitioner agreed to pay the membership dues and expenses levied by the Exchange. Said expenses were deducted by the partnership as general expenses.

4. The partnership agreement of Whitehouse & Company also provided that all other partners were to make specified cash contributions to capital, on which they would be paid interest at the rate of 4 1/2% per annum. Also, partner Berton J. Delmhorst would be paid interest at the rate of 4 1/2% on the market value of his membership, said market value to be redetermined each month. The agreement further provided that said stock exchange seat shall be an asset of the partnership insofar as may be necessary for the protection of creditors of the firm, and because the Constitution and Rules of the Exchange required it to be so. It was also understood and agreed to among the parties that said membership would remain the personal property of Berton J. Delmhorst.

5. On December 28, 1967, partner Berton J. Delmhorst agreed to sell his stock exchange seat to his son for the sum of \$457,000.00, pursuant to a voluntary payment subordination agreement. The agreement provided that the principal would be due only upon the son's death or incompetency, or if the son ceased to be a member of the Exchange, or if the son became insolvent, bankrupt, or if he was suspended by the Exchange, in which case Berton Delmhorst had a right to demand that his son sell the seat. No principal payments were made during the year at issue and, in fact, no principal payments were made up to the time of

the formal hearing.

A. That section 705 of the Tax Law provides the following:

Unincorporated business gross income means the sum of the items of income and gain of the business, of whatever kind and in whatever form paid, includable in gross income for the taxable year for federal income tax purposes, including income and gain from any property employed in the business, or from liquidation of the business, or from collection of installment obligations of the business. (Emphasis supplied.)

Therefore, since no principal payments were received, the deferred gain derived from the sale of the stock exchange seat was not subject to unincorporated business tax.

B. That the petition of Whitehouse & Co. is granted and the Notice of Deficiency issued on April 10, 1972 is cancelled.

DATED: Albany, New York

JAN 11 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER