

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
Daryl Associates	:	
for Redetermination of a Deficiency or a Revision	:	AFFIDAVIT OF MAILING
of a Determination or a Refund of Unincorporated	:	
Business Tax under Article 23 of the Tax Law for	:	
the Years 1975, 1976 & 1977.	:	

State of New York
County of Albany

David Parchuck, 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 27th day of May, 1983, he served the within notice of Decision by certified mail upon Daryl Associates, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Daryl Associates
7 Austin Place
Great Neck, NY 11020

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
27th day of May, 1983.

David Parchuck

Bernie O. Haglund

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

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of :
Daryl Associates :

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 Years 1975, 1976 & 1977. :

State of New York
County of Albany

David Parchuck, 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 27th day of May, 1983, he served the within notice of Decision by certified mail upon Samuel I. Rubin the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Samuel I. Rubin
Samuel I. Rubin & Co.
P.O. Box 33
Valley Stream, NY 11582

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
27th day of May, 1983.

David Parchuck

Conrad A. Haglund

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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

May 27, 1983

Daryl Associates
7 Austin Place
Great Neck, NY 11020

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) 690 & 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 Law 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
Law Bureau - Litigation Unit
Building #9 State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Samuel I. Rubin
Samuel I. Rubin & Co.
P.O. Box 33
Valley Stream, NY 11582
Taxing Bureau's Representative

STATE TAX COMMISSION

2. As a result of a field audit performed by the Audit Division for tax years 1974, 1975, 1976 and 1977, a Notice of Deficiency was issued for tax year 1975. The Notice, dated December 11, 1980, asserted additional tax due of \$1,031.53 plus penalty and interest in the amount of \$588.02 for a total of

\$1,619.55. Penalty was asserted under section 685(c) and 722 of the Tax Law for failure to file estimated tax returns and failure to pay estimated tax. Both partners of Daryl Associates, Stanley Seeman and Murray Seeman, signed consents fixing the period of limitation upon assessment of personal income and unincorporated business taxes on November 2, 1978 and December 7, 1979 which extended the period to issue a Notice of Deficiency for tax year 1975 to April 15, 1981.

3. Tax year 1975 is the only year at issue. The adjustments for 1976 and 1977 were not significant enough to result in additional tax due. Also, there is no record of a Notice of Deficiency being issued for tax year 1974 even though adjustments were made.

4. The only adjustment at issue herein is the disallowance of a deduction for unincorporated business tax purposes made by Daryl Associates in the amount of \$18,755.34. This deduction was made for loan interest expense paid to the Chase Manhattan Bank by Daryl Associates. The interest expense deduction was disallowed by the Audit Division on the basis that the loan was not really an obligation of Daryl Associates. The facts surrounding this transaction as drawn from the Audit Division's Report of Conference, dated October 10, 1978, are as follows:

- (a) Daryl Associates approached the Chase Manhattan Bank in 1973 for a loan to finance its construction activities.
- (b) In order to charge a higher rate of interest the Chase Manhattan Bank would not make the loan to Daryl Associates; they required that the loan be made to a corporation.
- (c) The partners organized a corporation, Stanley Manor Incorporated, for the purpose of obtaining the above mentioned loan from Chase Manhattan Bank.

- (d) The funds, obtained by Stanley Manor, Incorporated, were turned over to Daryl Associates and used by Daryl Associates for the purpose of financing its construction.
- (e) Repayment of the principal and interest to Chase Manhattan Bank was made directly by Daryl Associates.
- (f) The principals of Stanley Manor, Incorporated and Daryl Associates were one in the same. The principals assumed a secondary obligation to the bank to guarantee the loan in case of default by the corporation.

5. In disallowing the interest expense, the Audit Division took the position that the loan was an obligation of Stanley Manor, Incorporated. As the loan payments were never in default the principals were never under any obligation to pay the bank for the loan as guarantors.

6. Petitioner contended that the deduction of the interest expense was proper in view of the following three points:

- (a) There was an actual debtor creditor relationship.
- (b) There was a valid obligation to pay a fixed and determinable sum of money.
- (c) There was a liability to pay interest on the loans obtained by the partnership.

Petitioner relies upon the case of R.J. Beran, 40 TCM 163.

7. Petitioner's file does not include any loan instruments which reflect the agreement between Stanley Manor, Incorporated and Chase Manhattan Bank or between Stanley Manor, Incorporated and Daryl Associates.

CONCLUSIONS OF LAW

A. That section 706 of the New York State Tax Law provides that the unincorporated business deductions of an unincorporated business mean the items of loss and deduction directly connected with or incurred in the conduct of the business which are allowable for Federal income tax purposes for the taxable year, with certain modifications, none of which appear in this case. That

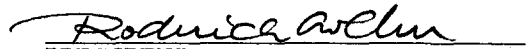
section 163 of the Internal Revenue Code provides that there shall be allowed as a deduction all interest paid or accrued within the taxable year on indebtedness.

B. That Daryl Associates was obligated to repay the principal and interest on the loan obtained by Stanley Manor, Inc. from the Chase Manhattan Bank. The loan was for the benefit of the partnership and was in fact used by the partnership to finance its business operations. The record indicates that the corporation was formed for the purpose of permitting the partnership to obtain the loan and that the corporation had no other business activity or purpose. Daryl Associates, by repaying the loan principal and interest directly to Chase Manhattan Bank, was, in effect, satisfying the corporation's obligation to Chase Manhattan Bank and their own obligation to Stanley Manor, Inc. (R.J. Beran, 40 TCM 163). Accordingly, the interest expense incurred by the partnership in repayment of said loan is properly deductible by Daryl Associates for unincorporated business tax purposes.

C. That the petition of Daryl Associates is granted and that the Notice of Deficiency issued to petitioner dated December 11, 1980 is cancelled.

DATED: Albany, New York
MAY 27 1983

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER