

Todd, Gordon Eliz

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

GORDON B. TODD & ELIZABETH K. TODD;
HIS WIFE

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

For a Redetermination of a Deficiency or
a Refund of Personal Income and Unincorporated Business
Taxes under Article(s) 16 & 16A of the
Tax Law for the (Year(s) 1949

State of New York
County of Albany

Rae Zimmerman, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 7th day of July, 1971, she served the within Notice of Decision (or Determination) by (certified) mail upon Gordon B. & Elizabeth K. Todd (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Gordon B. & Elizabeth K. Todd
Box 163
Cold Spring, 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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative of) 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

7th day of July, 1971

Ruth J. Farnas

Rae Zimmerman

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

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State of New York
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she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 7th day of July , 1971, she served the within
Notice of Decision (or Determination) by (certified) mail upon Walter W.
Walsh, Esq.

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: Walter W. Walsh, Esq.
c/o Hawkins, Delafield & Wood
67 Wall Street

and by depositing same enclosed in a postpaid properly addressed wrapper in a
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Sworn to before me this

7th day of July , 1971.

Martha Furaro

Rae Zimmerman

STATE OF NEW YORK
STATE TAX COMMISSION

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GORDON B. TODD

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For a Redetermination of a Deficiency or
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and 1950 thru 1954.

State of New York
County of Albany

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Gordon B. Todd

Box 163

Cold Spring, New York

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Sworn to before me this

7th day of July , 1971.

Arthur J. J. J.

Rae Zimmerman

STATE OF NEW YORK
STATE TAX COMMISSION

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State of New York
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Notice of Decision (or Determination) by (certified) mail upon Walter W.
Walsh, Esq.

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Walter W. Walsh, Esq.

c/o Hawkins, Delafield & Wood
122 East 42nd Street

New York, New York 10017
and by depositing same enclosed in a postpaid properly addressed wrapper in a
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Sworn to before me this

7th day of July , 1971.

[Signature]

Rae Zimmerman

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
GORDON B. TODD	:	
For revision or refund of Personal	:	
Income Taxes under Article 16, and	:	DETERMINATION
Unincorporated Business Taxes under	:	
Article 16-A of the Tax Law for the	:	
Years 1945 through 1948, and 1950	:	
through 1954.	:	

In the Matter of the Application	:	
of	:	
GORDON B. TODD & ELIZABETH K. TODD,	:	
HIS WIFE	:	DETERMINATION
For revision or refund of Personal	:	
Income Taxes under Article 16, and	:	
Unincorporated Business Taxes under	:	
Article 16-A of the Tax Law for the	:	
Year 1949.	:	

An application for revision or refund of Personal Income Taxes under Article 16 and Unincorporated Business Taxes under Article 16-A of the Tax Law for the years 1945 through 1948 and 1950 through 1954 was made by Gordon B. Todd. An application for the year 1949 was made by Gordon B. Todd and Elizabeth K. Todd, his wife. A formal hearing was held on December 16, 1964, in the offices of the State Tax Commission in the City of New York. The hearing was continued and completed on June 23, 1965 at the New York City office. The taxpayer appeared and was represented by Messrs., Hawkins, Delafield & Wood, (Walter W. Walsh, Esq., of Counsel).

FINDINGS OF FACT

1. On April 10, 1957 assessments were issued to the taxpayer by the Income Tax Bureau for the years 1945 through 1948, and 1950 through 1954, bearing the numbers SIB 6943 to 6946 and SIB 6948 to 6952 respectively. Assessment # SIB 6947 was issued to the taxpayer and his wife for the year 1949. The assessments were based on the findings that the purchase and sale of securities were ordinary income rather than capital gains, and that the taxpayer was operating an unincorporated business. The assessments originally totalled \$104,877.61 which included interest and penalties computed to the time of the assessment.

2. On March 26, 1958 taxpayer filed timely application for revision or refund.

3. During the years in question Mr. Todd maintained a two room office at 25 Broad Street, New York City. He arrived at his office each business day at about 8:00 a.m. and left at about 2:30 p.m. He had one full time employee who assisted him, and a part time employee who operated a bookkeeping machine three days a week.

4. During the years in question taxpayer had been engaged in the activity of writing options (known popularly by investors as puts and calls) on securities traded on the various exchanges and in the over-the counter market.

5. Taxpayer received telephone requests to write options each business day, from put and call brokers, customers of various brokerage houses and from individuals who had previously bought options from him. If taxpayer had the stock upon which an option was to be exercised in his possession, that stock would be the subject of the option. In those instances when the stock was not in the possession of the taxpayer at the time the

option was exercised, the taxpayer would purchase the stock on the stock exchange. The taxpayer would receive premiums from customers for the sale of options.

6. Taxpayer also received dividends on securities on which he had written calls and on those securities which he owned and which he may have put up as collateral on options written. Practically all of taxpayer's sales of securities represented the exercise of options that were sold by him. There were isolated cases of sales of securities by Mr. Todd which had no connection with his put and call business, but the transactions were small in number.

7. Taxpayer also converted puts and calls. Under this procedure outstanding puts are converted into calls, and calls into put positions for which the taxpayer received a fee from the customer.

DETERMINATION

A. The business activities of the taxpayer in buying and holding stocks are inseparable from his activities of using such stocks in his dealings as a writer of puts and calls, and conversions.

B. The business activities of the taxpayer, constituted the carrying on of an unincorporated business within the meaning and intent of Article 16-A of the Tax Law.

C. Gains on stock sold by the taxpayer in the course of his business activities constituted ordinary gains.

D. The application for revision or refund is denied and
the assessments are sustained.

DATED: Albany, New York

July 7, 1971

STATE TAX COMMISSION

William J. Sullivan

COMMISSIONER

Bruce W. Stanley

COMMISSIONER

Milton Koenig

COMMISSIONER