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STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
ESTATE OF MICHAEL DiMARINO and :
HELEN DiMARINO, Surviving Spouse :

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) 22 & 23 of the
Tax Law for the Year(s) 1965 and 1966.:

State of New York
County of Albany

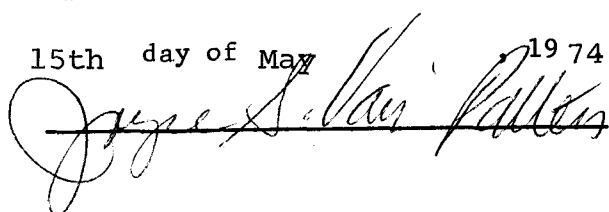
Martha Funaro , being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 15th day of May , 1974, she served the within
Notice of Decision (or Determination) by (certified) mail upon Helen DiMarino,
Executrix (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mrs. Helen DiMarino, Executrix
64-10 77th Place
Middle Village, 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

15th day of May

19 74





STATE OF NEW YORK
STATE TAX COMMISSION

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ESTATE OF MICHAEL DiMARINO and
HELEN DiMARINO, Surviving Spouse :

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a Refund of Personal Income and Unincorporated Business
Taxes under Article(s) 22 & 23 of the
Tax Law for the Year(s) 1965 and 1966.:

State of New York
County of Albany

Martha Funaro , 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 15th day of May , 1974 , she served the within
Notice of Decision (or Determination) by (certified) mail upon Bernard Breitbart,

C.P.A. (representative of) the petitioner in the within

proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: Bernard Breitbart, C.P.A.

34 Patton Blvd.

New Hyde Park, New York 11040

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

15th day of May

, 1974

Martha Funaro
James S. VanFatter



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A

STATE CAMPUS

ALBANY, N. Y. 12227

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

STATE TAX COMMISSION

Mario A. Procaccino
PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

ADDRESS YOUR REPLY TO

DATED: Albany, New York

May 15, 1974

Mrs. Helen DiMarino, Executrix
64-10 77th Place
Middle Village, New York

Dear Mrs. DiMarino:

Please take notice of the **DECISION** of
the State Tax Commission enclosed herewith.

Please take further notice that pursuant to **sections 690 and 722 of**
the Tax Law any proceeding in court to review an adverse decision
must be commenced within **4 months** after
the date of this notice.

Any inquiries concerning the computation of tax due or refund allowed
in accordance with this decision or concerning any other matter relat-
ing hereto may be addressed to the undersigned. These will be referred
to the proper party for reply.

Very truly yours,


Nigel G. Wright

HEARING OFFICER

cc Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

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| In the Matter of the Petition | : | |
| of | : | |
| ESTATE OF MICHAEL DiMARINO and | : | |
| HELEN DiMARINO, Surviving Spouse | : | |
| | : | DECISION |
| for a Redetermination of a Deficiency | : | |
| or for Refund of Personal Income Taxes | : | |
| under Article 22 of the Tax Law and of | : | |
| Unincorporated Business Taxes under | : | |
| Article 23 of the Tax Law both for the | : | |
| Years 1965 and 1966. | : | |

The Estate of Michael DiMarino and Helen DiMarino, surviving spouse, filed a petition for the redetermination of deficiencies in personal income taxes under Article 22 of the Tax Law and in unincorporated business taxes under Article 23 of the Tax Law both for the years 1965 and 1966.

A hearing was held on June 24, 1971 at the offices of the State Tax Commission, 80 Centre Street, New York City, before Nigel G. Wright, Hearing Officer. Bernard Breitbart, C.P.A. represented petitioners and Edward H. Best, Esq., (Francis X. Boylan, of Counsel) represented the Income Tax Bureau. The record of said hearing has been duly examined and considered.

ISSUE

The issue in the case is whether certain funds received by Michael DiMarino from Chevron Oil Company in 1966 were taxable income in 1966. Other issues presented by the notices of deficiency for 1966 and all issues presented by such notices for 1966 have been acquiesced to by petitioners.

FINDINGS OF FACT

1. The petitioner, Michael DiMarino operated a gas station in Brooklyn, New York. In 1966 he entered into certain agreements with Chevron Oil Company and in connection therewith received \$5,450.00 from Chevron for use in improving the premises of the gas station. In 1968 Mr. DiMarino died, but the gas station has been operated by his sons who have ratified these agreements and have entered into new and similar agreements with Chevron.

2. On November 28, 1966, Michael DiMarino entered into a supply agreement with the Chevron Oil Company with respect to Mr. DiMarino's gas station in Brooklyn. During the first year of the agreement Mr. DiMarino agreed to purchase a minimum of 72,000 gallons of gasoline from Chevron and Chevron agreed to deliver, if ordered, a maximum of 120,000 gallons to Mr. DiMarino. During subsequent years the minimum and maximum were set at 60% and 110% of the gasoline purchased by Mr. DiMarino from all sources. The price was set by reference to a posted dealer tank wagon price subject to a discount of one and one-quarter cents a gallon. The agreement was for five years "and indefinitely thereafter" but was terminable on its anniversary dates by written notice or at any time by Chevron for any material breach of contract.

3. On November 28, 1966, Michael DiMarino entered into a special agreement with Chevron with respect to the cash advance of \$5,450.00. Mr. DiMarino agreed to purchase from Chevron at least the minimum yearly quantities of gasoline stated in his supply agreement with Chevron, that if he did not purchase from

Chevron the minimum quantity of gasoline stated in the supply agreement he would refund and pay to Chevron the amount of nine-tenths of one cent per gallon for the deficiency in gallons purchased. Mr. DiMarino further agreed that if the supply agreement was terminated prior to the time he had purchased 600,000 gallons of gasoline he would refund and pay to Chevron \$5,450.00 less any refunds already paid and less an amount equal to nine-tenths of one cent per gallon for all gasoline purchased under the supply agreement (this penalty rate would require a repayment of \$5,400.00 if none of the 600,000 gallons was purchased).

4. Mr. DiMarino accounted immediately for the funds received by debiting cash and crediting his drawing account. The funds were actually used to improve the gas station. Mr. DiMarino's accountant set up a loan account for the funds. This loan was amortized over a five-year period by debiting the outstanding loan and crediting cost of gasoline. This reduces the cost of the gasoline in the accounts and results in higher income on the books. This income has been used to calculate subsequent taxes. The five-year period was chosen to reflect average annual purchases of 120,000 gallons of gasoline as against a liability under the agreement measured by purchases of a total of 600,000 gallons of gasoline. Mr. DiMarino was properly on the accrual basis of tax accounting.

5. The personal income tax deficiencies in issue amount to \$53.02 for 1965 and \$438.86 for 1966 with interest. The unincorporated business tax deficiencies in issue amount to \$55.44 for 1965 and \$275.37 for 1966 with interest. The deficiencies

for 1965 have not been contested and part of the deficiencies for 1966 have been acquiesced to.

CONCLUSIONS OF LAW

The funds received by petitioners from Chevron, their supplier, do not constitute income. Such funds when received were committed to a specific purpose and were not within the unrestricted control of petitioners. Furthermore the funds were in substance received under a contingent agreement to repay and although repayment in cash was clearly not contemplated, such agreement to repay imposes a valid legal obligation which constitutes debt. The petitioners accounting, while it could have been more precise, reflects income to petitioners when the obligation to repay in cash was cancelled by the purchase of the stipulated amounts of gasoline.

DECISION

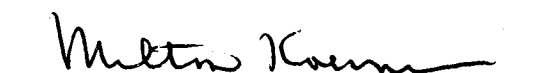
The petition is granted. The deficiencies for 1966 are found to be erroneous in part and are redetermined to be \$56.37 for personal income taxes and \$1.94 for unincorporated business taxes with interest on both sums to the date of the deficiency in the amount of \$11.45 for a total of \$69.76. Such sums are due together with such further interest as shall be computed under section 684 of the Tax Law.

DATED: Albany, New York
May 15, 1974

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER