

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

CHESTER SOLING and CAROLE SOLING

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article (x) 22 of the :
Tax Law for the Year (s) ~~xxxx Period (x)~~ 1968. :

State of New York
County of Albany

Marsina Donnini, 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 30th day of June, 1977, she served the within
Notice of Decision by (certified) mail upon Chester & Carole Soling

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

Mr. & Mrs. Chester Soling
22 Olmstead Road
Scarsdale, New York 10583

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~~
~~xxxxxx)~~ 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

30th day of June, 1977.

Marsina Donnini

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

AFFIDAVIT OF MAILING

CHESTER SOLING and CAROLE SOLING

For a Redetermination of a Deficiency or
a Revision of a Determination or a Refund
of Personal Income
Taxes under Article (x) 22 of the
Tax Law for the Year ~~(1967)~~ 1968.:

State of New York
County of Albany

Marsina Donnini, 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 30th day of June, 1977, she served the within
Notice of Decision by (certified) mail upon Samuel N. Greenspoon

(representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows:

Samuel N. Greenspoon, Esq.
Eaton, Van Winkle & Greenspoon
600 Third Avenue
New York, New York 10016

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

30th day of June, 1977.

Marsina Donnini

Just Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N.Y. 12227

ADDRESS YOUR REPLY TO

June 30, 1977

TELEPHONE: (518) **457-1723**

Mr. & Mrs. Chester Soling
22 Olmstead Road
Scarsdale, New York 10583

Dear Mr. & Mrs. Soling:

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

Please take further notice that pursuant to
Section(x) **690** of the Tax Law, any
proceeding in court to review an adverse deci-
sion must be commenced within **4 months**
from the date of this notice.

Inquiries concerning the computation of tax
due or refund allowed in accordance with this
decision or concerning any other matter relative
hereto may be addressed to the undersigned. They
will be referred to the proper party for reply.

Very truly yours,

Paul E. Coburn
Supervising Tax
Hearing Officer

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
CHESTER SOLING and CAROLE SOLING	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Taxes	:	
under Article 22 of the Tax Law for the	:	
Year 1968.	:	

Petitioners, Chester Soling and Carole Soling, residing at 22 Olmstead Road, Scarsdale, New York 10583 filed a petition for redetermination of deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1968. (File No. 00488).

A formal hearing was held before Neil Fabricant, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on November 10, 1976, at 12:00 noon. Petitioners appeared by Samuel N. Greenspoon, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Louis Senft, Esq. of counsel).

ISSUES

I. Whether petitioner, Chester Soling, was a partner in the firm of William M. Rosenbaum and Company.

II. Whether the funds received by petitioner from the firm in 1968 represented a distributive share of partnership income or a return of capital.

FINDINGS OF FACT

1. Petitioner, Chester Soling, failed to report as a distributive share of partnership income for 1968 the sum of \$27,088.00, a sum credited to him by the firm of William M. Rosenbaum and Company.

2. On April 12, 1974, the Income Tax Bureau issued a Statement of Audit Changes and a Notice of Deficiency imposing personal income tax of \$3,258.23 plus interest of \$995.01, for a total of \$4,253.24. This sum represented tax due on 1968 income, less \$314.00. The latter sum was the total tax paid by petitioner in 1969. Repayment of the \$27,088.00 was treated as a deduction for 1969 resulting in no taxable balance for that year.

3. Petitioner claims that because of an alleged fraud and non-disclosure surrounding the execution of the partnership agreement, he did not become a partner in the firm and that the monies received by him in 1968 represented a return of capital rather than a distribution of partnership income.

4. The relevant circumstances surrounding the execution of the partnership agreement and its subsequent cancellation are not in dispute. By the terms of an agreement between petitioner, Chester Soling, and William M. Rosenbaum, dated March 3, 1967, petitioner agreed to purchase and Rosenbaum agreed to sell a 30% interest in

the partnership. The assignment was to be made in two stages:

1) 12% on or about June, 1967; 2) 18% on April 1, 1968. The purchase price was \$250,000.00, of which \$100,000.00 was to be paid on the assignment of the 12% interest, \$50,000.00 on January 1, 1968 and a final payment of \$100,000.00 upon the assignment of the remaining 18% on April 1, 1968.

The assignment of the 12% interest was conditional, inter alia, upon Rosenbaum's securing the consent of the other partners in the firm. The agreement is silent as to the need for consent of the other partners with respect to the transfer of the remaining 18%. The agreement also provided that upon the assignment of the 12% interest, petitioner would contribute \$25,000.00 to the capital of the firm and that Rosenbaum would contribute and cause the other partners to contribute additional sums, so that the total capital of the firm would amount to approximately \$100,000.00.

Finally, the agreement provided that on the assignment of the full 30% interest, Rosenbaum would cause the other partners to enter into a new partnership with Soling, such new partnership to operate under specified terms and conditions not relevant to this proceeding.

The agreement specifically contemplated the refusal of the other partners to form the new partnership, in which case Rosenbaum was to enter into a new partnership with Soling and such other partners as were willing to join them.

5. Pursuant to this agreement, petitioner, Chester Soling, paid Rosenbaum \$100,000.00. He received a 12% interest in the partnership.

6. Petitioner worked in and maintained his office at the firm's principal place of business.

7. In 1968, the firm credited \$27,088.00 to petitioner's account. Petitioner, Chester Soling, withdrew \$17,478.56.

8. On May 31, 1968, the partners other than William M. Rosenbaum terminated the partnership, formed a new partnership and excluded petitioner from the new entity.

9. Petitioner neither received nor paid for the remaining 18% interest.

10. Petitioner thereupon initiated an action for damages in the Supreme Court, New York County, as well as arbitration proceedings against all of the partners.

11. In March, 1969, the parties settled the controversy. Petitioner received \$109,000 from William M. Rosenbaum, less the \$17,478.56 previously withdrawn from the partnership.

12. Petitioner, Chester Soling, now argues that the other partners claimed that they had not been informed of the agreement to transfer Rosenbaum's 18% interest; that had they been advised thereof, they would not have consented to the initial transfer of the 12% interest; that the failure by William M. Rosenbaum to disclose to his other partners the agreement to sell the 18% interest amounted to fraud; that the fraud vitiated the initial

partnership consent; and that, therefore, petitioner was never a partner "in fact or law." Accordingly, the monies received from the firm amounted to a return of capital rather than a distributive share of partnership income.

CONCLUSIONS OF LAW

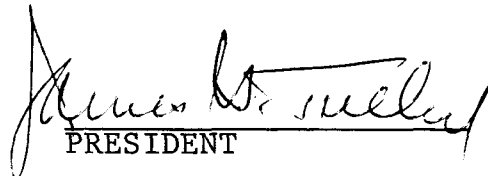
A. That in 1968, petitioner was a partner in the firm of William M. Rosenbaum and Company. Even if we were to assume that the non-disclosure of the terms of the agreement between Rosenbaum and petitioner could annul the partnership agreement from its inception, petitioner has failed to produce any credible evidence of such fraud. Moreover, petitioner's own complaint in the Supreme Court litigation specifically acknowledges and relies upon his partnership status. Petitioner worked in the firm's offices as a partner and admittedly thought of himself as a partner, as did the other members of the firm. The termination of the partnership, the ensuing litigation and the eventual settlement all underscore petitioner's partnership status.

B. That the income received from the firm of William M. Rosenbaum and Company was a distributive share of partnership income and fully taxable as such.

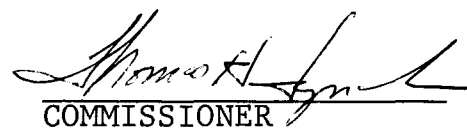
C. That the petition of Chester Soling and Carole Soling is denied and the Notice of Deficiency issued April 12, 1974 is sustained.

DATED: Albany, New York
June 30, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER