

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

MORRIS PHILIP AND SYLVIA PHILIP

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or  
a Revision of a Determination or a Refund  
of Personal Income  
Taxes under Article(s) 22 of the  
Tax Law for the Year(s) ~~on Period(s)~~ 1970;

State of New York  
County of Albany

Carmen Mottolese, 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 23rd day of August, 1976, she served the within Notice of Decision by (certified) mail upon Morris Philip and Sylvia Philip ~~xxxxxx~~ the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mr. & Mrs. Morris Philip  
26 Bruckner Boulevard  
Bronx, New York 10454

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

23rd day of August, 1976.

Carmen Mottolese

Janet Mack

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

PHILIP KNITTING MILLS

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Unincorporated Business :  
Taxes under Article(x) 23 of the :  
Tax Law for the Year(~~xxxxxx~~Period(s)) 1970.:

State of New York  
County of Albany

Carmen Mottolese, 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 23rd day of August, 1976, she served the within Notice of Decision by (certified) mail upon Philip Knitting Mills ~~XXXXXXXXXXXXXXXXXXXX~~ the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Philip Knitting Mills  
26 Bruckner Boulevard  
Bronx, New York 10454  
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 ~~XXXXXXXXXXXX~~ of the) petitioner herein and that the address set forth on said wrapper is the last known address of the ~~XXXXXXXXXXXX~~ of the) petitioner.

Sworn to before me this

23rd day of August, 1976.

Carmen Mottolese

Janet Mack

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

MORRIS PHILIP AND SYLVIA PHILIP &

PHILIP KNITTING MILLS

For a Redetermination of a Deficiency or  
a Revision of a Determination or a Refund  
of Personal Income & Unincorporated Business  
Taxes under Article(s) 22 and 23 of the  
Tax Law for the Year(s) ~~or Period(s)~~ 1970.:

AFFIDAVIT OF MAILING

State of New York  
County of Albany

Carmen Mottolese, 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 23rd day of August, 1976, she served the within Notice of Decision by (certified) mail upon David L. Schwartz, 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: David L. Schwartz, C.P.A.  
331 Madison Avenue  
New York, New York 10017

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

23rd day of August, 1976.

Carmen Mottolese

Janet Mack

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

MORRIS PHILIP AND SYLVIA PHILIP &

PHILIP KNITTING MILLS

For a Redetermination of a Deficiency or  
a Revision of a Determination or a Refund  
of Personal Income & Unincorporated Business  
Taxes under Article(s) 22 and 23 of the  
Tax Law for the Year(s) ~~1970~~ 1970.:

AFFIDAVIT OF MAILING

State of New York  
County of Albany

Carmen Mottolese, 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 23rd day of August, 1976, she served the within  
Notice of Decision by (certified) mail upon Irving Saltzman, Esq.

(representative of) the petitioner in the within proceeding,

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

as follows: Irving Saltzman, Esq.  
Trause, Saltzman and Perlman  
276 Fifth Avenue  
New York, New York 10001

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

23rd day of August, 1976.

Carmen Mottolese

Janet 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

August 23, 1976

TELEPHONE: (518) **457-3850**

Philip Knitting Mills  
26 Bruckner Boulevard  
Bronx, NY 10454

Gentlemen:

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

Please take further notice that pursuant to  
Section(§) **722** 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 B. Coburn**  
Supervising Tax  
Hearing Officer

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU

STATE CAMPUS

ALBANY, N.Y. 12227

August 23, 1976

ADDRESS YOUR REPLY TO

TELEPHONE: (518) **457-3850**

Mr. & Mrs. Morris Philip  
26 Bruckner Boulevard  
Bronx, New York 10454

Dear Mr. & Mrs. Philip:

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

Please take further notice that pursuant to  
Section **(a) 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 B. Coburn**  
**Supervising Tax**  
**Hearing Officer**

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
	:	
MORRIS PHILIP and SYLVIA PHILIP	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under:	:	
Article 22 of the Tax Law for the Year	:	
1970.	:	

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In the Matter of the Petition	:	
	:	
of	:	
	:	
PHILIP KNITTING MILLS	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law	:	
for the Year 1970.	:	

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Morris Philip and Sylvia Philip, 26 Bruckner Boulevard, Bronx, New York 10454, filed a petition under section 689 of the Tax Law for the redetermination of a deficiency in personal income tax under Article 22 of the Tax Law for the year 1970.

Morris Philip and Sylvia Philip, individually and as co-partners, d/b/a Philip Knitting Mills, filed a petition under sections 689 and 722 of the Tax Law for a redetermination of a

deficiency in unincorporated business tax under Article 23 of the Tax Law for the year 1970.

The deficiency for personal income tax was asserted by a notice issued on March 25, 1974, and is in the amount of \$14,249.58 plus interest of \$2,517.05 for a total of \$16,766.63.

The deficiency for unincorporated business tax was asserted by a notice issued on March 25, 1974, and is in the amount of \$23,383.72 plus interest of \$4,130.50 for a total of \$27,514.22.

A hearing was duly held on December 10, 1975, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, before Nigel G. Wright, Hearing Officer. Petitioners were represented by Irving Saltzman, Esq. of Trause, Saltzman & Perlman and by David Schwartz, CPA. The Income Tax Bureau was represented by Peter Crotty, Esq., appearing by Michael Alexander, Esq.

The record of said hearing was duly examined and considered.

#### ISSUE

Whether a partnership must include in its income for purposes of unincorporated business tax certain income received by an individual partner in liquidation of corporations and as royalties on patent licenses.



FINDINGS OF FACT

1. Morris Philip and his wife, Sylvia Philip, petitioners herein, are residents of the Bronx. Mr. Morris Philip began to work in 1922 at age 17 as a mechanic in knitting mills.

2. In 1936, Mr. and Mrs. Philip formed Philip Knitting Mills to engage in the manufacture of sweaters. Said company files returns for unincorporated business tax. Its premises are located in the Bronx and comprise about 25,000 square feet for knitting and 40,000 square feet for finishing. At one time it had 300 employees. During World War II, Mr. Philip worked on Federal Government contracts and served on industry committees relating to the war effort. Philip Knitting Mills was the only knitting mill to receive the Army-Navy "E" award. After 1970, the firm ceased doing finishing work and now does only knitting, employing about 30 people.

3. Mr. Morris Philip has since the 1920's created and designed many improvements in the machinery used for knitting. Since the start of his own business, he has received forty or fifty patents for designs which greatly increased the productivity of this machinery. These patents have been issued in the name of Mr. Morris Philip individually. They have been licensed to others in his individual name. The licensees are the Singer Sewing Machine Co.

and other manufacturers of knitting machines. Mr. Philip receives a royalty of ten or fifteen percent of the sales price of each machine. Mr. Philip himself did not manufacture machines. When his own knitting mill purchased machinery, it would do so in the same way as any other business. Mr. Philip's work in design did not require capital and was not done by him during his normal supervision of the knitting mill.

4. Philip Knitwear Industries, Inc. was a corporation with its stock owned entirely by Mr. and Mrs. Philip. It was not in the knitting business. It owned loft buildings in Manhattan which it leased to business tenants. Neither its stock nor any dividends from the stock were listed on the books of Philip Knitting Mills and were not in any other way connected with that firm. This corporation was liquidated effective December 31, 1970 resulting in capital gains for Federal and New York income tax purposes. The real estate distributed was placed in the joint names of Mr. and Mrs. Philip.

5. Andover Realty Corporation had owned real estate in Brooklyn. Its stock was owned directly by Mr. and Mrs. Philip and not by the knitting mill. The corporation had been liquidated prior to 1970 but during 1970 Mr. and Mrs. Philip received a small liquidating distribution in cash, resulting in a capital gain for Federal and New York income tax purposes.

6. The deficiency under review for personal income tax relates to the minimum income tax and is, for the years in question, conceded by petitioners.

CONCLUSIONS OF LAW

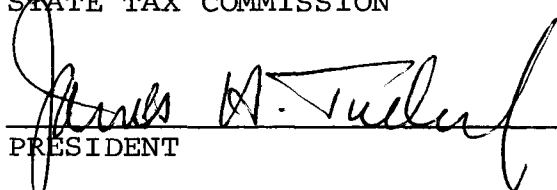
A. That the liquidating dividends from the corporations and the royalty income are not connected with the business of the petitioner, Philip Knitting Mills, and are not subject to the unincorporated business tax.

B. That the deficiency for unincorporated business tax is erroneous in its entirety and is cancelled.

C. That the deficiency for personal income tax is found, by reason of petitioners' concession, to be correct and is due together with such interest as shall be computed under section 684 of the Tax Law.

DATED: Albany, New York  
August 23, 1976

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER