

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
John P. & Ulla G. Sellas :

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of
Personal Income Tax :
under Article 22 of the Tax Law
for the Years 1962 - 1971. :

AFFIDAVIT OF MAILING

State of New York
County of Albany

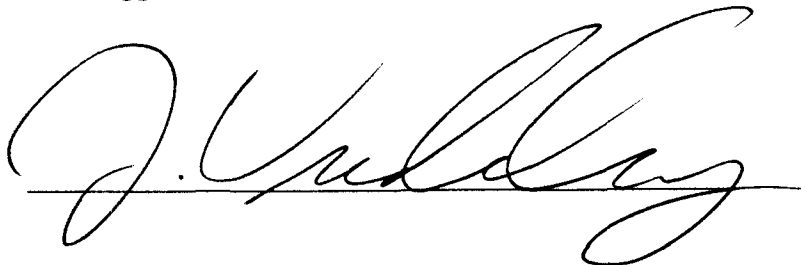
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 14th day of November, 1980, he served the within notice of Decision by certified mail upon John P. & Ulla G. Sellas, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

John P. & Ulla G. Sellas
9 Ridgebrook Rd.
Greenwich, CT 06230
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
14th day of November, 1980.


Deborah A. Bank



STATE OF NEW YORK
STATE TAX COMMISSION

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of
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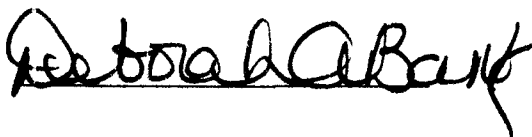
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 14th day of November, 1980, he served the within notice of Decision by certified mail upon E. E. Finucan the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

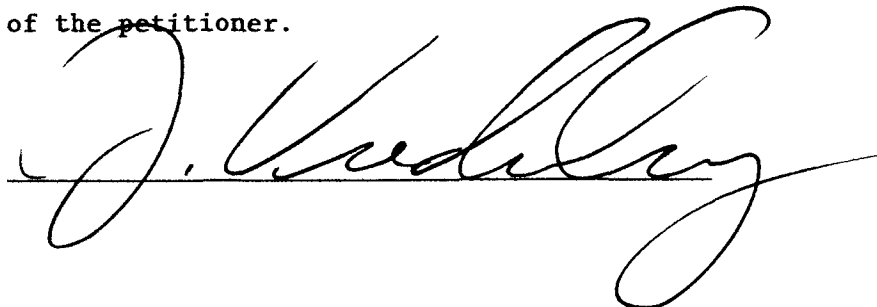
Mr. E. E. Finucan
Finucan & Greenwood
10 E. 40th St.
New York, NY 10016

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
14th day of November, 1980.





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

November 14, 1980

John P. & Ulla G. Sellas
9 Ridgebrook Rd.
Greenwich, CT 06230

Dear Mr. & Mrs. Sellas:

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 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 Laws 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
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
E. E. Finucan
Finucan & Greenwood
10 E. 40th St.
New York, NY 10016
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
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of	:	
	:	
JOHN P. SELLAS and EVELEIGH N. SELLAS	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Years	:	
1962 through 1964.	:	

Petitioners, John P. Sellas and Eveleigh N. Sellas, 9 Ridgebrook Road, Greenwich, Connecticut 06230, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1962 through 1964 (File No. 01768).

A formal hearing was held before Nigel Wright, Hearing Officer, at the offices of the State Tax Commission. Two World Trade Center, New York, New York, on July 17, 1975 at 1:20 P.M. and continued on August 5, 1976 at 9:15 A.M. The hearing was continued to conclusion before Edward L. Johnson, Hearing Officer, on June 24, 1977 at 12:40 P.M. Petitioners appeared by E. E. Finucan, CPA. The Audit Division appeared by Peter Crotty, Esq. (Alexander Weiss, Esq., of counsel).

ISSUE

Whether petitioners were required to file New York State income tax nonresident returns.

FINDINGS OF FACT

1. Petitioners, John P. Sellas and Eveleigh N. Sellas, did not file New York State income tax nonresident returns for 1962 through 1964.

2. Petitioner John P. Sellas was a member partner of Van Alstyne, Noel & Co. for the short period February 1, 1962 through December 31, 1962 and for

calendar years 1963 and 1964. Said partnership had its principal office in New York City and maintained various branch offices outside New York State.

3. Petitioners contended that based on the advice of their accountants, they were not required to file New York State income tax returns.

4. Petitioner John P. Sellas signed consents fixing period of limitation upon assessment of personal income and unincorporated business taxes for years 1962 through 1964, until April 15, 1974.

5. On November 26, 1973, the Income Tax Bureau issued a Notice of Deficiency for 1962 through 1964 asserting personal income tax of \$1,636.00, penalty, pursuant to section 685(c) of the Tax Law, for 1963 and 1964 of \$46.00, plus interest of \$861.21, for a total sum of \$2,543.21. Said notice was issued on the grounds that petitioner John P. Sellas was a member partner of Van Alstyne, Noel & Co., which derived a portion of its business income from sources within this State, and because of a New York audit of the partnership returns filed by said firm.

CONCLUSIONS OF LAW

A. That petitioners, John P. Sellas and Eveleigh N. Sellas, were required to file New York State income tax nonresident returns for 1962 through 1964 since petitioner John P. Sellas, a member partner of Van Alstyne, Noel & Co., received income derived from New York State sources within the meaning and intent of section 637(a)(1) of the Tax Law and 20 NYCRR 134.1.

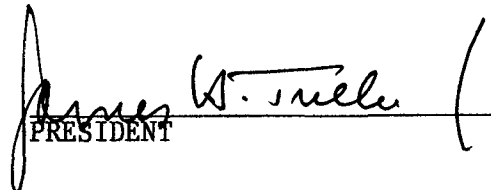
B. That the Audit Division is hereby directed to recompute John P. Sellas's proportionate share of partnership income from Van Alstyne, Noel & Co. in a manner consistent with the State Tax Commission decision in the Matter of the Petition of Van Alstyne, Noel & Co., signed on this date.

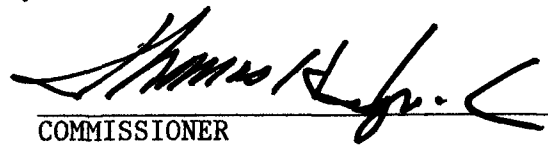
C. That the Audit Division is directed to modify the Notice of Deficiency issued on November 26, 1973 to the extent shown in Conclusions of Law "B",


supra; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York
NOV 14 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petitions	:	
of	:	
JOHN P. SELLAS and ULLA G. SELLAS	:	DECISION
for Redetermination of Deficiencies or	:	
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ISSUES

I. Whether petitioner John P. Sellas, a member partner of Van Alstyne, Noel & Co., properly allocated his distributive share of partnership income.

II. Whether petitioner John P. Sellas was required to report his distributive share of partnership income/loss from Mawdsley, Sellas & Co., a Missouri partnership, for 1969 through 1971.

III. Whether petitioner John P. Sellas was entitled to deduct losses incurred from a joint venture which was engaged in oil and gas explorations

during 1969 and 1970.

IV. Whether petitioners were required to add to total income petitioner John P. Sellas's share of the New York City unincorporated business tax deduction taken on the partnership return of Van Alstyne, Noel & Co. for 1966 through 1969.

V. Whether petitioners, both of whom were New York State residents for 1967 and 1968, were limited to the amount of net operating loss carryback shown on their Federal income tax returns.

VI. Whether petitioners were entitled to allocate petitioner John P. Sellas's distributive share of partnership income received from Van Alstyne, Noel & Co. for 1965 on the basis of the number of months they were residents and nonresidents.

FINDINGS OF FACT

1. Petitioners, John P. and Ulla G. Sellas, filed New York State income tax returns for 1965 through 1971.

2. Petitioner John P. Sellas was a member partner of Van Alstyne, Noel & Co. for 1962 through 1971, and a partner of Russell, McElnea & Co. and Mawdsley, Sellas & Co. for 1968 through 1971. He also was a member of several oil ventures for 1969 and 1970. His share of partnership income/loss from Russell, McElnea & Co. is not at issue.

3. Petitioner John P. Sellas signed consents fixing period of limitation upon assessment of personal income and unincorporated business taxes, which consents extended the period for assessment of personal income tax for 1962 through 1969, until April 15, 1974.

4. On November 26, 1973, the Income Tax Bureau issued two notices of deficiency; the first notice was issued to petitioner John P. Sellas for 1965

and asserted personal income tax of \$3,315.00, penalty, pursuant to section 685(c) of the Tax Law, of \$7.00, plus interest of \$1,477.00, for a total sum of \$4,799.00. On his New York return for 1965, petitioner John Sellas indicated that he changed his status from nonresident to resident on October 23, 1965. He allocated his share of partnership income from Van Alstyne, Noel & Co. on the basis of the number of months he was a New York resident. The Income Tax Bureau contended that his entire share of partnership income was attributable to his resident period and that he had no New York income during the nonresident period; the second notice of deficiency was issued to petitioners John P. Sellas and Ulla Sellas for 1966 through 1971. Said notice asserted personal income tax of \$27,029.00, plus interest of \$5,711.04, for a total sum of \$32,740.04. There was no tax stated on the notice of deficiency for 1970 and 1971. Petitioners, John Sellas and Ulla Sellas, filed joint New York State income tax resident returns for 1966 through 1968, and a part-year nonresident return for 1969 in which they indicated that they were residents for the period January 1, 1969 through September 30, 1969, and nonresidents for the remainder of the year. Petitioners filed New York State income tax nonresident returns for 1970 and 1971.

5. Petitioners filed Form IT-115, "Notice of Change in Taxable Income by United States Treasury Department Pursuant to Section 659 of the New York State Tax Law", for 1966 and 1967. Said adjustments were taken into account when the New York auditor prepared his "Schedule of Audit Adjustments and Additional Tax Due".

6. The New York adjustments for 1966 through 1969 were based, in part, on the omission of petitioner John Sellas's share of the New York City unincorporated business tax deductions taken on the partnership return of Van Alstyne,

Noel & Co. The adjustments for 1969 through 1971 were based, in part, on petitioner's share of partnership income/loss from Mawdsley, Sellas & Co. and from oil lease joint ventures. The Income Tax Bureau contended that both partnerships carried on business outside New York State. Adjustments also were made to sale of gas and oil properties and oil and gas royalties.

7. Mawdsley, Sellas & Co. was a partnership formed in the State of Missouri. It had two functions: the first was the financing of cattle and included such matters as investing money, borrowing money, and making arrangements for various banking relationships in order to get enough money to buy the cattle; the second function was the actual cattle operation which included the purchasing of the animals, the selection of the feed yards in which they were kept, and the checking of the animals until they were ready for sale. Petitioners' representative stated that feed yards were located all over the Southwest and West, including California, Nevada, Louisiana, Texas and Oklahoma. Van Alstyne, Noel & Co. provided the collateral on loans made to Mawdsley, Sellas & Co. Van Alstyne, Noel & Co. was not a member partner in Mawdsley, Sellas & Co., nor did it carry said firm on its books as an investment.

Petitioner John Sellas and the other partners of Van Alstyne, Noel & Co. became joint venturers with Nyvatex, a joint venture involved in oil and gas exploration. The joint venture had no place of business in New York State during 1969 and 1970. The partners of Van Alstyne, Noel & Co. and their wives owned a large amount of stock in Nyvatex Oil Co., a public company listed in over-the-counter stocks. The explorations took place in the State of Montana and various other places, but not in New York State. In order to drill for oil, Nyvatex would seek out financing in the Wall Street financial community of New York City, excluding Van Alstyne, Noel & Co., and also from other

companies. The partners of Van Alstyne, Noel & Co. became joint venturers as individuals and not as partners. Petitioners contended that Nyvatex also was engaged in a number of financial ventures in New York City, but submitted no evidence to support their contention.

8. The New York field auditor's recomputation of New York income for 1970 and 1971 resulted in a net operating loss for each year. The Income Tax Bureau limited petitioner's carryback to 1967 of his 1970 New York net operating loss, to the amount of his Federal net operating loss. For 1968, the Income Tax Bureau allowed petitioners to carryback their Federal net operating loss which loss was in excess of the New York net operating loss for 1971.

CONCLUSIONS OF LAW

A. That the Audit Division is hereby directed to recompute John P. Sellas's proportionate share of partnership income from Van Alstyne, Noel & Co. in a manner consistent with the State Tax Commission decision in the Matter of the Petition of Van Alstyne, Noel & Co., signed on this date.

B. That petitioner John P. Sellas is not allowed to allocate his share of partnership income for 1965 on the basis of the number of months he was a New York State resident; that when a member of a partnership changes his status from resident to nonresident or vice versa, his distributive share of partnership income, gain, loss and deduction shall be included in the computation of his taxable income for the portion of the taxable year in which or with which the taxable year of the partnership ends, and treatment of his distributive share for New York income tax purposes shall be determined by his status as a resident or nonresident at such time within the meaning and intent of Section 654 of the Tax Law and 20 NYCRR 148.6.

C. That the New York City unincorporated business tax is an income tax within the meaning and intent of Chapter 46, Title S of the Administrative

Code for the City of New York; that the New York City unincorporated business tax is an income tax for which deduction shall be allowed under section 706(4) of Article 23 of the Tax Law, which refers to the computation of New York State unincorporated business income tax. For purposes of personal income tax, Article 22 is applicable, which article requires under section 612(b)(3) of the Tax Law a modification increasing total income by adding back income taxes imposed by this or any other state or taxing jurisdiction; therefore, New York City unincorporated business tax was not deductible in computing New York State total income.

D. That although financial arrangements were made on behalf of Mawdsley, Sellas & Co. at the offices of Van Alstyne, Noel & Co. in New York City, such location did not constitute a place of business of the Missouri partnership; that even though the interests of the partners in Mawdsley, Sellas & Co. were in the same percentages as their proportionate interests in Van Alstyne, Noel & Co., the Missouri partnership did not maintain in this State a place of business where its business affairs were systemically and regularly carried on. Therefore, petitioner John P. Sellas's share of partnership income/loss from Mawdsley, Sellas & Co. is not includable in determining his total New York income under section 637(a)(1) of the Tax Law and 20 NYCRR 134.1.

E. That petitioners are not entitled to deduct losses from oil lease joint ventures since said losses were incurred as a result of oil drilling operations, which were carried on outside New York State, and which were individually financed by petitioner John P. Sellas.

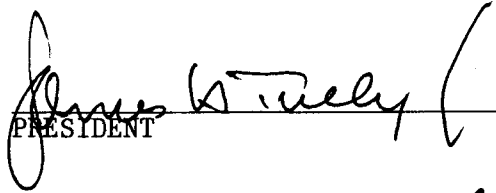
F. That petitioners, both of whom were New York State residents during 1967 and 1968, are allowed to deduct a net operating loss carryback equal to the amount of carryback loss shown on their Federal income tax returns within the meaning and intent of section 612 of the New York Tax Law.


G. That the Audit Division is directed to modify the notices of deficiency issued on November 26, 1973 to the extent shown in Conclusions of Law "A" and "F" supra; and that, except as so granted, the petition is in all other respects denied.


DATED: Albany, New York

STATE TAX COMMISSION

NOV 14 1980


PRESIDENT


COMMISSIONER


COMMISSIONER

TA 26 (9-79)

STATE OF NEW YORK
State Tax Commission
TAX APPEALS BUREAU

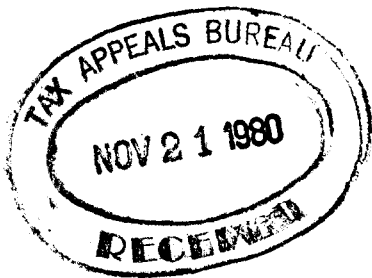
STATE CAMPUS

ALBANY, N. Y. 12227

Sent

OPSG-UGT

John P. & Ulla G. Sellas
9 Riddickbrook Rd
Greenwich, CT 06230



No. 622131

MAIL

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

November 14, 1980

John P. & Ulla G. Sellas
9 Ridgebrook Rd.
Greenwich, CT 06230

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NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
E. E. Finucan
Finucan & Greenwood
10 E. 40th St.
New York, NY 10016
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
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ISSUE

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FINDINGS OF FACT

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2. Petitioner John P. Sellas was a member partner of Van Alstyne, Noel & Co. for the short period February 1, 1962 through December 31, 1962 and for

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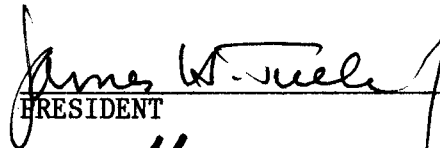
C. That the Audit Division is directed to modify the Notice of Deficiency issued on November 26, 1973 to the extent shown in Conclusions of Law "B",

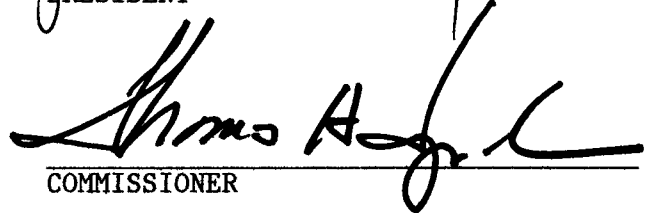
supra; and that, except as so granted, the petition is in all other respects denied.


DATED: Albany, New York

STATE TAX COMMISSION

NOV 14 1980


PRESIDENT


COMMISSIONER


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STATE TAX COMMISSION

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V. Whether petitioners, both of whom were New York State residents for 1967 and 1968, were limited to the amount of net operating loss carryback shown on their Federal income tax returns.

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Noel & Co. The adjustments for 1969 through 1971 were based, in part, on petitioner's share of partnership income/loss from Mawdsley, Sellas & Co. and from oil lease joint ventures. The Income Tax Bureau contended that both partnerships carried on business outside New York State. Adjustments also were made to sale of gas and oil properties and oil and gas royalties.

7. Mawdsley, Sellas & Co. was a partnership formed in the State of Missouri. It had two functions: the first was the financing of cattle and included such matters as investing money, borrowing money, and making arrangements for various banking relationships in order to get enough money to buy the cattle; the second function was the actual cattle operation which included the purchasing of the animals, the selection of the feed yards in which they were kept, and the checking of the animals until they were ready for sale. Petitioners' representative stated that feed yards were located all over the Southwest and West, including California, Nevada, Louisiana, Texas and Oklahoma. Van Alstyne, Noel & Co. provided the collateral on loans made to Mawdsley, Sellas & Co. Van Alstyne, Noel & Co. was not a member partner in Mawdsley, Sellas & Co., nor did it carry said firm on its books as an investment.

Petitioner John Sellas and the other partners of Van Alstyne, Noel & Co. became joint venturers with Nyvatex, a joint venture involved in oil and gas exploration. The joint venture had no place of business in New York State during 1969 and 1970. The partners of Van Alstyne, Noel & Co. and their wives owned a large amount of stock in Nyvatex Oil Co., a public company listed in over-the-counter stocks. The explorations took place in the State of Montana and various other places, but not in New York State. In order to drill for oil, Nyvatex would seek out financing in the Wall Street financial community of New York City, excluding Van Alstyne, Noel & Co., and also from other

companies. The partners of Van Alstyne, Noel & Co. became joint venturers as individuals and not as partners. Petitioners contended that Nyvatex also was engaged in a number of financial ventures in New York City, but submitted no evidence to support their contention.

8. The New York field auditor's recomputation of New York income for 1970 and 1971 resulted in a net operating loss for each year. The Income Tax Bureau limited petitioner's carryback to 1967 of his 1970 New York net operating loss, to the amount of his Federal net operating loss. For 1968, the Income Tax Bureau allowed petitioners to carryback their Federal net operating loss which loss was in excess of the New York net operating loss for 1971.

CONCLUSIONS OF LAW

A. That the Audit Division is hereby directed to recompute John P. Sellas's proportionate share of partnership income from Van Alstyne, Noel & Co. in a manner consistent with the State Tax Commission decision in the Matter of the Petition of Van Alstyne, Noel & Co., signed on this date.

B. That petitioner John P. Sellas is not allowed to allocate his share of partnership income for 1965 on the basis of the number of months he was a New York State resident; that when a member of a partnership changes his status from resident to nonresident or vice versa, his distributive share of partnership income, gain, loss and deduction shall be included in the computation of his taxable income for the portion of the taxable year in which or with which the taxable year of the partnership ends, and treatment of his distributive share for New York income tax purposes shall be determined by his status as a resident or nonresident at such time within the meaning and intent of Section 654 of the Tax Law and 20 NYCRR 148.6.

C. That the New York City unincorporated business tax is an income tax within the meaning and intent of Chapter 46, Title S of the Administrative

Code for the City of New York; that the New York City unincorporated business tax is an income tax for which deduction shall be allowed under section 706(4) of Article 23 of the Tax Law, which refers to the computation of New York State unincorporated business income tax. For purposes of personal income tax, Article 22 is applicable, which article requires under section 612(b)(3) of the Tax Law a modification increasing total income by adding back income taxes imposed by this or any other state or taxing jurisdiction; therefore, New York City unincorporated business tax was not deductible in computing New York State total income.

D. That although financial arrangements were made on behalf of Mawdsley, Sellas & Co. at the offices of Van Alstyne, Noel & Co. in New York City, such location did not constitute a place of business of the Missouri partnership; that even though the interests of the partners in Mawdsley, Sellas & Co. were in the same percentages as their proportionate interests in Van Alstyne, Noel & Co., the Missouri partnership did not maintain in this State a place of business where its business affairs were systemically and regularly carried on. Therefore, petitioner John P. Sellas's share of partnership income/loss from Mawdsley, Sellas & Co. is not includable in determining his total New York income under section 637(a)(1) of the Tax Law and 20 NYCRR 134.1.

E. That petitioners are not entitled to deduct losses from oil lease joint ventures since said losses were incurred as a result of oil drilling operations, which were carried on outside New York State, and which were individually financed by petitioner John P. Sellas.

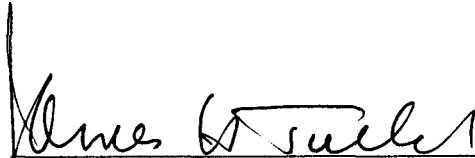
F. That petitioners, both of whom were New York State residents during 1967 and 1968, are allowed to deduct a net operating loss carryback equal to the amount of carryback loss shown on their Federal income tax returns within the meaning and intent of section 612 of the New York Tax Law.

G. That the Audit Division is directed to modify the notices of deficiency issued on November 26, 1973 to the extent shown in Conclusions of Law "A" and "F" supra; and that, except as so granted, the petition is in all other respects denied.

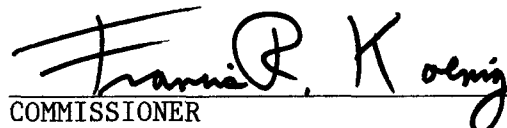
DATED: Albany, New York

NOV 14 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER