

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
Maurice Brashears (deceased)	:	
and Margaret Brashears (Executrix)	:	AFFIDAVIT OF MAILING
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 Year	:	
1975.	:	

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 4th day of August, 1982, he served the within notice of Decision by certified mail upon Maurice Brashears (deceased), and Margaret Brashears (Executrix) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

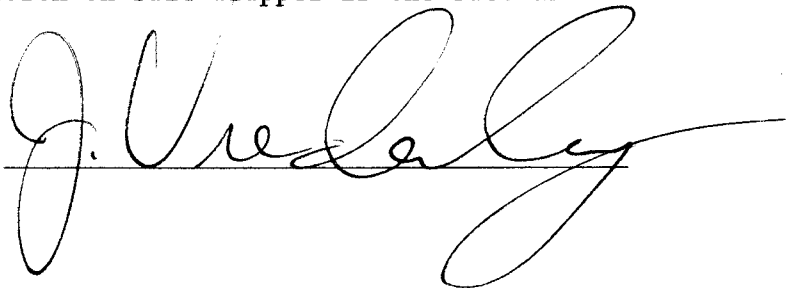
Maurice Brashears (deceased)
and Margaret Brashears (Executrix)
c/o Dick Brashears
9 Ronald Lane
Sayville, NY 11782

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
4th day of August, 1982.





STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Maurice Brashears (deceased) :
and Margaret Brashears (Executrix) : AFFIDAVIT OF MAILING
:
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 Year :
1975. :

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 4th day of August, 1982, he served the within notice of Decision by certified mail upon Larry Feldman the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Larry Feldman
13 Dover Ave.
Massapequa, NY 11758

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
4th day of August, 1982.

Ann Marie A. Caplan

J. Vredenburg

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

August 4, 1982

Maurice Brashears (deceased)
and Margaret Brashears (Executrix)
c/o Dick Brashears
9 Ronald Lane
Sayville, NY 11782

Dear Mrs. Brashears:

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
Law Bureau - Litigation Unit
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Larry Feldman
13 Dover Ave.
Massapequa, NY 11758
Taxing Bureau's Representative

STATE TAX COMMISSION

Whether petitioner Maurice L. Brashears must include in total New York income that portion of his distributive share of partnership income which was reported on the partnership return of Leggette, Brashears & Graham as being derived from New York State sources.

FINDINGS OF FACT

1. Petitioners, Maurice L. Brashears (deceased) and Margaret Brashears, filed a U.S. Individual Income Tax Return for the year 1975 wherein they included in income a \$34,810.00 distribution received by Maurice L. Brashears from the partnership Leggette, Brashears & Graham (hereinafter "L, B & G").

2. On February 3, 1977 the Audit Division corresponded with petitioners advising them that it had been unable to locate their 1975 New York State income tax return and, that if one had not been filed, to complete and submit a return. The letter further stated that:

"Our files reveal that in 1975, you received a distributive share of income from the partnership of Leggette, Brashears and Graham, in the amount of \$10,214.00, from New York sources. From this information, you received sufficient income from New York sources to necessitate filing a New York State income tax return for the taxable year 1975."

3. On October 27, 1977 petitioners submitted to the Audit Division a 1975 New York State Income Tax Nonresident Return. On said return petitioners reported that no income was derived from or connected with New York State sources. A total of four exemptions was claimed on the return.

4. By Notice of Deficiency dated April 4, 1978, petitioners were assessed additional personal income tax due of \$289.98, plus penalty (Tax Law section 685(c) for failure to pay estimated tax) and interest. Said notice was based on an explanatory Statement of Audit Changes dated December 29, 1977, wherein petitioners' total New York income was determined to be \$10,214.00, said amount representing Mr. Brashears' distributive share of partnership income derived from New York State sources as reported on "L, B & G's" 1975 New York State partnership return. In computing the tax due, the Audit Division allowed petitioners credit for two exemptions.

5. For all of 1975 "L, B & G" maintained an office in Tampa, Florida. From January 1, 1975 to March 28, 1975 "L, B & G" also maintained an office in New York City. Effective March 28, 1975, "L, B & G" closed its New York City office and opened an office in the State of Connecticut. Petitioners argue that Mr. Brashears' distributive share of partnership income attributable to New York sources as reported on "L, B & G's" partnership return was overstated. No documentary or other evidence was offered to support said argument.

6. Attached to petitioners' 1975 Federal income tax return was Schedule C, Profit or (Loss) From Business or Profession. Said schedule reported no gross receipts or sales, but did claim expenses totaling \$3,284.49. The expenses claimed on Schedule C in actuality represented unreimbursed expenses incurred by Maurice L. Brashears in the discharge of his duties as a senior partner of "L, B & G."

CONCLUSIONS OF LAW

A. That pursuant to sections 632(a)(1)(A) and 637(a)(1) of the Tax Law and 20 NYCRR 134.1, a nonresident partner of a partnership is required to allocate his distributive share of income to New York sources in the same proportion as the partnership allocates its income to sources within and without the State (Jablin v. State Tax Commission, 65 A.D.2d 891).

B. That petitioners have failed to sustain their burden of proof [Tax Law section 689(e)] to show that Maurice L. Brashears' distributive share of partnership income derived from New York State sources as reported on "L, B & G's" partnership return was overstated or incorrectly computed.

C. That the tax due must be recomputed allowing petitioners credit for four exemptions, the dollar amount of said exemptions to be computed in accordance with section 636(a) of the Tax Law.

D. That the unreimbursed expenses incurred by petitioner Maurice L. Brashears and reported on Schedule C represent expenses attributable to the production of "L, B & G" partnership income. Accordingly, a portion of said expenses are deductible in determining petitioners' total New York income, said portion computed by placing petitioner Maurice L. Brashears' New York share of "L, B & G" income over his total share of "L, B & G" income, multiplied by the total expenses claimed $(10,214/34,810 \times \$3,284.49)$.

E. That the petition of Maurice L. Brashears (deceased) and Margaret Brashears is granted to the extent indicated in Conclusions of Law "C" and "D", supra; that the Audit Division is directed to modify the Notice of Deficiency dated April 4, 1978 to be consistent with the conclusions reached herein; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

AUG 04 1982

STATE TAX COMMISSION

ACTING PRESIDENT

COMMISSIONER

COMMISSIONER