

STATE OF NEW YORK
STATE TAX COMMISSION

*McBride, Breen
E
Slater U.B.
ART. 23*

In the Matter of the Petition

of
SIDNEY J. MCBRIDE, EDWARD F. BREEN & CHARLES G.
SLATER, Individually and as co-partners, doing
business under the firm name and style of

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

For a Redetermination of a Deficiency or
a Refund of Unincorporated Business.
Taxes under Article(s) 23 of the
Tax Law for the (Year(s) f/y/e April 30, 1963
and April 30, 1964

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 8th day of July , 1971, she served the within
Notice of Decision (or Determination) by (certified) mail upon Sidney J.

McBride (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Sidney J. McBride
10 Highland Park Place
Rye, 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

8th day of July , 1971

Linda Wilson

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

SIDNEY J. MCBRIDE, of EDWARD F. BREEN & CHARLES G. SLATER, Individually and as co-partners, doing business under the firm name and style of MCBRIDE, BREEN & SLATER :
For a Redetermination of a Deficiency or a Refund of Unincorporated Business.
Taxes under Article(s) 23 of the Tax Law for the (Year(s) f/y/e April 30, 1963, and April 30, 1964

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

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 8th day of July , 1971 , she served the within Notice of Decision (or Determination) by (certified) mail upon Robert S.

Sherwood, 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: Robert S. Sherwood, C.P.A.
60 East 42nd Street
New York, 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

8th day of July , 1971

Linda Wilson

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

SIDNEY J. MCBRIDE, of EDWARD F. BREEN & CHARLES G.
SLATER, Individually and as co-partners, AFFIDAVIT OF MAILING
doing business under the firm name and style OF NOTICE OF DECISION
of MCBRIDE, BREEN & SLATER BY (CERTIFIED) MAIL
For a Redetermination of a Deficiency or
a Refund of Unincorporated Business:
Taxes under Article(s) 23 of the
Tax Law for the (Year(s) f/y/e April 30, 1963
and April 30, 1964

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 8th day of July , 19 71, she served the within
Notice of Decision (or Determination) by (certified) mail upon Charles G.

Slater (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Charles G. Slater
1 Georgia Avenue
Bronxville, 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

8th day of July , 1971

Linda Wilson

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

SIDNEY J. MCBRIDE, of EDWARD F. BREEN & CHARLES G.
SLATER, Individually and as co-partners, doing business under the firm name and style of
MCBRIDE, BREEN & SLATER : AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) MAIL
For a Redetermination of a Deficiency or
a Refund of Unincorporated Business :
Taxes under Article(s) 23 of the
Tax Law for the (Year(s) f/y/e April 30, 1963
and April 30, 1964

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 8th day of July , 1971 , she served the within
Notice of Decision (or Determination) by (certified) mail upon Edward F.

Breen (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Edward F. Breen
70 East 10th Street
New York, 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

8th day of July , 1971.

Linda Wilson

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition	:	
on Behalf of	:	
SIDNEY J. McBRIDE, EDWARD F. BREEN	:	
AND CHARLES G. SLATER,	:	DECISION
Individually and as co-partners, doing	:	
business under the firm name and style	:	
of McBride, Breen & Slater	:	
for Redetermination of deficiencies or for	:	
Refund of Unincorporated Business Taxes	:	
under Article 23 of the Tax Law for the	:	
fiscal years ended April 30, 1963, and	:	
April 30, 1964.	:	

A petition was filed on behalf of McBride, Breen & Slater, a partnership, for redetermination of deficiencies or for refund of unincorporated business taxes under Article 23 of the Tax Law for the fiscal years ended April 30, 1963, and April 30, 1964.

The petitioners' representative, Robert S. Sherwood, C.P.A., has waived the formal hearing before the State Tax Commission and consented to a decision by the Commission without the introduction of additional evidence.

ISSUE

Whether the net income from the business activities of the partnership, described as "architects and designers," is subject to the unincorporated business tax.

FINDINGS OF FACT

1. The petitioners filed New York State partnership tax returns (IT 204), for the fiscal year ended April 30, 1963, on July 16, 1963, and for the fiscal year ended April 30, 1964, on February 15, 1965. The portion of each tax return relating to the tax and payment of the unincorporated business tax was marked with the word "exempt" or "none," without any computations of tax.

2. On April 10, 1968, the Income Tax Bureau issued a Notice of Deficiency under File No. 558, in the amount of \$1,822.72, plus statutory interest.

3. A petition for redetermination was timely filed.

4. The partnership designs and plans retail stores, usually department stores. Their work includes new stores or the alteration of existing ones. They are usually responsible for the interiors, except for those matters which are required by law to be done by architects or engineers.

In a typical contract, the partnership would study sales volume by departments, decide on department locations, space allotment and traffic patterns. They would decide on the location of storage facilities, set color schemes and also design fixtures. The partners employ draftsman to assist in the work done by the principals.

5. The members of the partnership are not licensed architects or engineers.

DECISION

A. The partnership is not engaged in an exempt profession within the meaning and intent of Article 23 of the Tax Law.

B. The net income derived from the business activities of the partnership, described as "architects and designers" is subject to the unincorporated business tax.

C. The Notice of Deficiency is sustained and the petition is denied.

DATED: Albany, New York

July 8, 1971.

STATE TAX COMMISSION

Thomas J. Sullivan

COMMISSIONER

Richard H. Hickey

COMMISSIONER

Walter K. Krum

COMMISSIONER

BUREAU OF LAW
MEMORANDUM

TO: Louis Etlinger

FROM: James Scott

SUBJECT: McBride, Breen & Slater
Breen & Slater
State Tax Commission decisions dated
July 8, 1971

Tax Commission decisions on the above, based on consents obtained by Commissioner Koerner, were mailed out on July 8, 1971. Thereafter, Robert S. Sherwood, Esq., 60 East 42nd Street, New York, New York 10017, wrote a July 13, 1971 letter to Hearing Officer L. Newman stating that "there is no contemplation of carrying the matter any further----I would appreciate....final billing from the State so that the running of interest might cease". (attached).

In view of the above letter from the taxpayer's representative, the Income Tax and Hearing Unit folders are herewith returned in order that your office may expeditiously compute the total amount due and advise the representative.

This matter will be reflected on our records as a closed case.

Associate Attorney

JS:lk
Enc.
cc: Commissioner Koerner
Edward Rock

July 20, 1971