STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

J. RICH STEERS, INC. & FREDERICK SNARE CORP. Individually & as co-partners d/b/a the firm name and style of STEERS-SNARE (T.N.), a Joint Venture

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) 1961

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 29th day of August, 1972, she served the within Notice of Decision (or Determination) by (certified) mail upon J. Rich Steers, Inc. & Frederick Snare, Corp. (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

J. Rich Steers, Inc. & Frederick Snare Corp.
d/b/u Steers-Snare
363 7th Avenue
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

29th day of August, 1972.

Lynn Wilson

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

J. RICH STEERS, INC. & FREDERICK SNARE CORP. Individually & as co-partners d/b/u the firm name and style of STEERS SNARE (T.N.), a Joint Venture

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) 1961

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 29th day of August , 1972, she served the within Notice of Decision (or Determination) by (certified) mail upon J. Edwin Ullmann, 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: J. Edwin Ullmann, C.P.A.
363 7th Avenue
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
29th day of August , 1972.

Martha Funaro

Lynne Wilson

STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE
BUILDING 9, ROOM 214A
STATE CAMPUS
ALBANY, N. Y. 12227
AREA CODE 518
457-2655, 6, 7

STATE TAX COMMISSION
NORMAN F. GALLMAN, PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

Dated: Albany, New York

August 29, 1972

J. Rich Steers, Inc. & Frederick Snare Corp.
d/b/u Steers-Snare
363 7th Avenue
New York, New York

Gentlemen:

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

Please take further notice that pursuant to **section 722** the Tax Law any proceeding in court to review an adverse decision must be commenced within **4 Months** after the date of this notice.

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

Very truly yours,

Nigel G. Wright

Nigel G. Wright
HEARING OFFICER

cc Petitioner's Representative
Law Bureau

AD-1.12 (7/70)

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition of J. RICH STEERS, INC. AND FREDERICK SNARE CORP. individually and as copartners d/b/u the firm name and style of Steers-Snare (T.N.) a joint venture for a redetermination of a deficiency or for refund of unincorporated business taxes under Article 23 of the Tax Law for the year 1961.	DECISION

The taxpayer having filed a petition pursuant to Tax Law Sections 722 and 689 for a redetermination of a deficiency under date of April 13, 1965 of unincorporated business tax imposed under Article 23 of the Tax Law for the year 1961, and a hearing having been held on February 5, 1970 before Nigel G. Wright, Hearing Officer, and the record thereof having been duly examined and considered,

The State Tax Commission hereby

FINDS:

1. The issue in this case is whether certain indirect expenses incurred on behalf of a joint venture by one of the corporate partners thereof can be taken as deductions on the joint venture return and to what extent this affects the computation of the additional exemption under section 709(2) the purpose of which is to avoid taxing the income of a joint venture a second time when that income is included in the income of the corporate partner.

2. A statement of audit changes dated October 7, 1964 was issued in the amount of $14,368.21 plus interest. A revised statement of audit changes dated March 4, 1965 was issued in the amount of $2,777.20 plus interest of $486.01 for a total of $3,263.21. This amount has been remitted. A further revised statement of audit changes together with a notice of deficiency was issued on April 13, 1965 in the amount of $14,368.21 less the previous remittance of $3,263.21 for a net deficiency of $11,105.00 plus interest. It is this deficiency which is in issue.

3. The petitioner was a joint venture engaged in the construction of the Throggs Neck Bridge in Staten Island, New York during 1960 and 1961. Frederick Snare Corporation put up capital and received 20% of the gross profit from the job. J. Rich Steers, Inc. managed the job and received all remaining profit.

4. The joint venture reported on the completed contract method of accounting. Gross receipts were $11,014,296.07 costs of construction were $10,476,171.78 resulting in a gross profit of $538,124.29. To this was added other income of $86,867.53 attributable to discounts to arrive at a total income of $624,991.82.

5. The taxpayer asserts that the joint venture incurred certain indirect costs consisting of the overhead of J. Rich Steers, Inc. paid by J. Rich Steers, Inc. in 1960 and 1961 which was attributable to the work of the joint venture. These costs amount to $471,562.77 and are 49% of the costs of $962,373.31 for wages, rent, interest, pension expense and other expenses. (Expenses for officers salaries, repairs, taxes and depreciation were not allocated). The allocation of 49% is based on the receipts of the joint venture divided by the total receipts of J. Rich Steers, Inc. for the years 1960 and 1961.

These indirect costs were taken each year on the corporate tax return. They were not eligible for inclusion in the completed contract method of accounting.

6. The taxpayer filed a partnership return showing gross receipts of $11,014,296.07 cost of construction of $10,476,171.78 leaving a gross profit of $538,124.29. To this was added other income of $86,867.53 to show a total income of $624,991.82. The share of this amount assigned to F. Snare Corporation was 20% and to J. R. Steers, Inc. was 80%. The taxpayer joint venture did not pay a tax with the return asserting that all income would be picked up on the franchise tax returns of the corporate partners filed under Article 9-A of the Tax Law. If this was acceptable, it would reflect a theory that the joint venture is a mere conduit for purposes of interstate allocation with the result that the receipts and deductions of the joint venture conducted completely within the State of New York are allocated to other states in accordance with the business allocation ratios appearing on the franchise tax returns of the partners.

7a. The deficiency under date of April 13, 1965 found net income to be $624,991.82, as reported on the return and allowed, under Tax Law Section 709, a basic exemption of $5,000 and an additional exemption computed under section 709(2) of $260,786.59 for a taxable balance of $359,205.23 and a tax of $14,368.21 plus interest.

7b. The additional exemption under Tax Law section 709(2) was computed as follows: The taxable income of $624,991.82 was divided between the partners 80%, $499,993.46 to J. Rich Steers, Inc. and the remaining 20%, $124,998.36, to F. Snare Corporation. These amounts had been included in the Article 9-A franchise tax returns of the tax corporations.

These amounts were multiplied by the respective Article 9-A franchise tax business allocation percentages of the two corporations (38.55% and 54.432%) resulting in amounts of $192,747.48 and $63,039.11 which when added results in the additional credit of $260,786.59.

7c. The calculation of this deficiency is with respect to the return as filed, in accordance with Tax Law section 709(2) and reflects a theory that a joint venture whose activity takes place entirely in New York should not be entitled to an allocation of income to other states. The possible double taxation which might result from the inclusion of the joint venture income in the income of the corporate partners is eliminated by providing a deduction for the amount of such income appearing on the corporate return as such income is allocated to New York. Although this deduction refers to figures on the corporate return it is provided in section 709(2) that it be taken on the return of the joint venture.

8a. The taxpayer's position is represented by the statement of audit changes dated March 4, 1965. The income of $624,991.82 is reduced by the indirect expenses of $471,562.77 to arrive at a net income of $153,429.77 from which an exemption of $5,000 and an additional exemption of $78,999.16 is deduction to arrive at a taxable balance of $69,429.91.

The additional exemption was computed as follows: The net income of $153,429.05 is divided between the two corporate partners $124,998.36, the amount actually received by F. Snare Corp. to F. Snare Corporation and the remainder of $28,430.69 is allocated to J. Rich Steers, Inc. The total for each partner is then multiplied by its business allocation percentage to arrive at an exemption of $10,960.65 for Steers and $68,039.11 for Snare or a total exemption of $78,999.16.

8b. This position differs from the Bureau's position only in the treatment of indirect expenses. This position treats the indirect expenses as if they had been shown on the return of the joint venture for 1960 and 1961 with a net operating loss carry-over of the 1960 expenses to the 1961 return, the ordinary income of the venture is computed to be $153,429.05 which is taken into the returns of the corporate partners as separate figures of $624,991.82 for total income and $471,562.77 for expenses included in separately itemized figures on the returns and resulting in a net figure of $153,429.05.

Upon the foregoing findings and all the evidence in the case the State Tax Commission decides:

A. The indirect expenses of the joint venture were properly "paid or incurred" by it for purposes of the deduction of trade or business expenses by the joint venture. Under the agreement of joint venture all expenses of the venture were to be paid by one of the partners and the payment by that partner out of its own bank account and in its own name is in every way equivalent to the payment of the expense by the venture itself.

B. The inclusion of the indirect expenses in the joint venture return is proper. It is conceded that the indirect expenses are attributable to joint venture activities. It is apparent that the taxpayer filed out its return with only the expenses directly attributable to the long term contract in mind. The indirect expenses however while not qualifying for the completed contract method of accounting chosen by the taxpayer are still ordinary and necessary expenses of the venture. It is not contended that the indirect expenses here in issue are prohibited by Tax Law section 706(3). The additional exemption provided by Tax Law section 709(2) is computed on the basis of "the excess of the unincorporated business gross income over the deductions allowed

under...[Section 706] and Section 706 allows the trade or business expenses allowable for federal income tax purposes which include these indirect expenses in issue.

C. The inclusion of the indirect expenses on the joint venture return does not result in improper "double deductions." It is immaterial whether the indirect expenses are used on the joint venture return to reduce the net income which is then carried over to the returns of the partners, on the one hand, or whether, on the other hand, the income is carried into the partners returns without reduction by indirect expenses and the indirect expenses are carried over to the partner's returns separately. In fact, under Internal Revenue Code Section 702 and 703, each kind of item of gross income and deduction may be properly considered as being carried separately to the partners returns. In any event, the result here is that the indirect expenses in issue appear only once on the venture return and only once on the corporate return. There is no doubling of deductions on either return.

D. The inclusion of the indirect expenses on the joint venture return is required if the policy of the statute is to be carried out. If these expenses are not thus taken into account, they appear only on the corporate return and the corporation gets the benefit of them only to the extent of its allocation ratio attributable to its interstate business. Since, however, these expenses are attributable to the joint venture, whose activity is 100% within New York, the taxpayer should be entitled to benefit from them to the extent of 100%. This is accomplished by allowing the deduction of these expenses in full on the joint venture return and then eliminating their effect on the corporate return by means of the Section 709(2) computation.

NEW YORK
Taxation and Finance
ATE CAMPUS
ALBANY, N. Y. 12227

CERTIFIED
No. 592770
MAIL

RETURN TO SENDER

UNKNOWN

J. Rich Steers, Inc. & Frederick Snare Corp.
d/b/u Steers-Snare
363 7th Avenue
New York, New York

SEP 16 1972

SEP 6 1972
3858

E. The petition is allowed and the deficiency under date of April 13, 1965 is revised so as to reinstate the computation found in the statement of audit changes of March 4, 1965 showing a tax due of $2,777.20 and interest of $486.01 for a total of $3,263.21. This amount having been paid the taxpayers liability in this matter is discharged.

DATED: Albany, New York
August 29, 1972

STATE TAX COMMISSION

COMMISSIONER

COMMISSIONER

COMMISSIONER

STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE
BUILDING 9, ROOM 214A
STATE CAMPUS
ALBANY, N. Y. 12227
AREA CODE 518
457-2655, 6, 7

STATE TAX COMMISSION
NORMAN F. GALLMAN, PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

Dated: Albany, New York

August 29, 1972

J. Rich Steers, Inc. & Frederick
Snare Corp.
d/b/u Steers-Snare
363 7th Avenue
New York, New York

Gentlemen:

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

Please take further notice that pursuant to section 722 the Tax Law any proceeding in court to review an adverse decision must be commenced within 4 Months after the date of this notice.

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

Very truly yours,

Nigel G. Wright

Nigel G. Wright
HEARING OFFICER

cc Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition of J. RICH STEERS, INC. AND FREDERICK SNARE CORP. individually and as copartners d/b/u the firm name and style of Steers-Snare (T.N.) a joint venture for a redetermination of a deficiency or for refund of unincorporated business taxes under Article 23 of the Tax Law for the year 1961.	DECISION

The taxpayer having filed a petition pursuant to Tax Law Sections 722 and 689 for a redetermination of a deficiency under date of April 13, 1965 of unincorporated business tax imposed under Article 23 of the Tax Law for the year 1961, and a hearing having been held on February 5, 1970 before Nigel G. Wright, Hearing Officer, and the record thereof having been duly examined and considered,

The State Tax Commission hereby

FINDS:

1. The issue in this case is whether certain indirect expenses incurred on behalf of a joint venture by one of the corporate partners thereof can be taken as deductions on the joint venture return and to what extent this affects the computation of the additional exemption under section 709(2) the purpose of which is to avoid taxing the income of a joint venture a second time when that income is included in the income of the corporate partner.

STATE TAX COMMISSION

In the matter of the petition

of

J. ROSS BROWN, INC. AND

for a redetermination of deficiency
or for refund of [illegible]
business taxes under Article 29-B of
the Tax Law for the year 1951.

The taxpayer having filed a petition pursuant to Tax Law sections 722 and 803 for a redetermination of a deficiency under date of April 13, 1955 of unincorporated business taxes imposed under Article 29-B of the Tax Law for the year 1951, and a hearing having been held on February 7, 1956 before Miguel O. Muñoz, hearing officer, and the record having been duly examined and considered,

The State Tax Commission hereby

FINDS:

1. The issue in this case is whether certain indirect expenses incurred on behalf of a joint venture by one of the corporate partners thereof can be taken as deductions on the joint venture return and to what extent this affects the computation of the additional assessment under section 722(2) the purpose of which is to avoid taxing the income of a joint venture a second time when that income is included in the income of the corporate partner.

2. A statement of audit changes dated October 7, 1964 was issued in the amount of $14,368.21 plus interest. A revised statement of audit changes dated March 4, 1965 was issued in the amount of $2,277.20 plus interest of $486.01 for a total of $3,263.21. This amount has been remitted. A further revised statement of audit changes together with a notice of deficiency was issued on April 13, 1965 in the amount of $14,368.21 less the previous remittance of $3,263.21 for a net deficiency of $11,105.00 plus interest. It is this deficiency which is in issue.

3. The petitioner was a joint venture engaged in the construction of the Throggs Neck Bridge in Staten Island, New York during 1960 and 1961. Frederick Snare Corporation put up capital and received 20% of the gross profit from the job. J. Rich Steers, Inc. managed the job and received all remaining profit.

4. The joint venture reported on the completed contract method of accounting. Gross receipts were $11,014,296.07 costs of construction were $10,476,171.78 resulting in a gross profit of $538,124.29. To this was added other income of $86,867.53 attributable to discounts to arrive at a total income of $624,991.82.

5. The taxpayer asserts that the joint venture incurred certain indirect costs consisting of the overhead of J. Rich Steers, Inc. paid by J. Rich Steers, Inc. in 1960 and 1961 which was attributable to the work of the joint venture. These costs amount to $471,562.77 and are 49% of the costs of $962,373.31 for wages, rent, interest, pension expense and other expenses. (Expenses for officers salaries, repairs, taxes and depreciation were not allocated). The allocation of 49% is based on the receipts of the joint venture divided by the total receipts of J. Rich Steers, Inc. for the years 1960 and 1961.

2. A statement of audits closed during October 1, 1958 was issued in the amount of $14,493,871 plus interest. A revised statement of audit changes dated March 4, 1958 was issued in the amount of $52,977.70 plus interest of $4,040.00 for a total of $3,203.21. This amount has been remitted. A further revised statement of audit changes covering which a notice of deficiency was issued on April 17, 1958 in the amount of $14,389.21 less the previous credits of $8,382.01 in a net deficiency of $11,105.00 plus interest. It is this deficiency which is in issue.

3. The petitioner was a joint venture engaged in the construction of the Throgs Neck bridge in Bronx Island, New York during 1950 and 1951. Prudential Bond Corporation put up capital and received 20% of the gross profit after the 3%. Rich Steele, Inc. managed the job and received all remaining profit.

4. The joint venture reported on the completed contract method of accounting. Gross receipts were $11,014,296.07 cost of construction were $10,474,174.10 resulting in a gross profit of $540,121.97. To this was added other income of $89,807.23 attributable to discounts in excess of a bank income of $254,981.82.

5. The taxpayer asserts that the joint ventures incurred certain indirect costs consisting of and overhead of J. Rich Steele, Inc. paid by J. Rich Steele, Inc. in 1951 and 1952 which was attributable to the work of the joint venture. These costs amount to $471,552.17 and are 50% of the sum of $942,275.31 for wages, rent, interest, [illegible] use of automobiles, [illegible] for office salaries, [illegible] fares and [illegible] which [illegible] 4% allocation of 40% is based on the receipts of the joint venture divided by the total receipts of J. Rich Steele, Inc. for the years 1950 and 1951.

These indirect costs were taken each year on the corporate tax return. They were not eligible for inclusion in the completed contract method of accounting.

6. The taxpayer filed a partnership return showing gross receipts of $11,014,296.07 cost of construction of $10,476,171.78 leaving a gross profit of $538,124.29. To this was added other income of $86,867.53 to show a total income of $624,991.82. The share of this amount assigned to F. Snare Corporation was 20% and to J. R. Steers, Inc. was 80%. Thettaxpayer joint venture did not pay a tax with the return asserting that all income would be picked up on the franchise tax returns of the corporate partners filed under Article 9-A of the Tax Law. If this was acceptable, it would reflect a theory that the joint venture is a mere conduit fof purposes of interstate allocation with the result that the receipts and deductions of the joint venture conducted completely within the State of New York are allocated to other states in accordance with the business allocation ratios appearing on the franchise tax returns of the partners.

7a. The deficiency under date of April 13, 1965 found net income to be $624,991.82, as reported on the return and allowed, under Tax Law Section 709, a basic exemption of $5,000 and an additional exemption computed under section 709(2) of $280,786.59 for a taxable balance of $359,205.23 and a tax of $14,368.21 plus interest.

7b. The additional exemption under Tax Law section 709(2) was computed as follows: The taxable income of $624,991.82 was divided between the partners 80%, $499,993.46 to J. Rich Steers, Inc. and the remaining 20%, $124,998.36, to F. Snare Corporation. These amounts had been included in the Article 9-A franchise tax returns of the tax corporations.

These indirect costs were taken each year on the corporate tax returns. They were not eligible for inclusion in the completed contract method of accounting.

6. The venture reported gross receipts of $11,014,758.17, cost of construction of $10,478,311.70 leaving a gross profit of $[illegible], to which was added other income of $80,[illegible] for a total income of $624,[illegible].

The share of this amount assigned to P. Shore Corporation was 20% and to J. Rich Steers, Inc. was 80%. The taxpayer joint venture did not pay a tax with the return asserting that all income should be picked up on the franchise tax returns of the corporate partners filed under Article 9-A of the Tax Law. If this was acceptable, it would indicate a theory that the joint venture is a mere conduit for purposes of allocation with the result that the receipts and deductions of the joint venture conducted completely within the State of New York are allocated to other states in accordance with the business allocation ratios appearing on the franchise tax returns of the partners.

7. The deficiency under date of April 13, 1965 found net income to be $624,[illegible], as reported on the return and allowed, under Tax Law section 707, a basic exemption of $5,000 and an additional exemption computed under section 709(2) of $240,[illegible] for a taxable balance of $379,[illegible] and a tax of $14,[illegible] plus interest.

7A. The additional exemption under Tax Law section 709(2) was computed as follows: The taxable income of $624,[illegible] was divided between the partners: 80% $499,553.46 to J. Rich Steers, Inc. and the remaining 20% $124,[illegible] to P. Shore Corporation. These amounts had been included in the Article 9-A franchise tax returns of the two corporations.

These amounts were multiplied by the respective Article 9-A franchise tax business allocation percentages of the two corporations (38.55% and 54.432%) resulting in amounts of $192,747.48 and $63,039.11 which when added results in the additional credit of $260,786.59.

7c. The calculation of this deficiency is with respect to the return as filed, in accordance with Tax Law section 709(2) and reflects a theory that a joint venture whose activity takes place entirely in New York should not be entitled to an allocation of income to other states. The possible double taxation which might result from the inclusion of the joint venture income in the income of the corporate partners is eliminated by providing a deduction for the amount of such income appearing on the corporate return as such income is allocated to New York. Although this deduction refers to figures on the corporate return it is provided in section 709(2) that it be taken on the return of the joint venture.

8a. The taxpayer's position is represented by the statement of audit changes dated March 4, 1965. The income of $624,991.82 is reduced by the indirect expenses of $471,562.77 to arrive at a net income of $153,429.77 from which an exemption of $5,000 and an additional exemption of $78,999.16 is deduction to arrive at a taxable balance of $69,429.91.

The additional exemption was computed as follows: The net income of $153,429.05 is divided between the two corporate partners $124,999.36, the amount actually received by F. Snare Corp. to F. Snare Corporation and the remainder of $28,430.69 is allocated to J. Rich Steers, Inc. The total for each partner is then multiplied by its business allocation percentage to arrive at an exemption of $10,960.65 for Steers and $68,039.11 for Snare or a total exemption of $78,999.16.

These amounts were multiplied by the respective Article 9-A franchise tax business allocation percentages of the two corporations (30.85% and 56.429%) resulting in amounts of $152,741.48 and $83,039.11 which when added results in the additional credit of $220,780.59.

7. The explanation of this deficiency is with respect to the return as filed, in accordance with Tax Law section 209(2) and regulations a theory that a joint venture whose activity takes place entirely in New York should not be entitled to an allocation of income to other states. The possible double taxation which might result from the inclusion of the joint venture income in the income of the corporate partners is eliminated by providing a deduction for the amount of such income appearing on the corporate return as such income is allocated to New York, although this deduction is figured on the corporate return it is provided in section 209(2) that it be taken on the return of the joint venture.

8. The taxpayer's position is represented by the statement of audit changes dated March 4, 1965. The income of $824,891.52 is reduced by the indirect expenses of $471,562.70 to arrive at a net income of $353,328.82 from which an exemption of $5,000 and an additional exemption of $70,398.16 is deducted to arrive at a taxable balance of $589,430.91.

The additional exemption was computed as follows: The net income of $353,328.82 is divided between the two corporate partners ($104,294.24, the amount actually received by P. Sears Corp. to P. Bruce Corporation and the remainder of $248,130.08 is allocated to J. Rich Stores, Inc. The total for each partner is then multiplied by its business allocation percentage to arrive at an exemption of $70,398.16 for Stores and $42,000.13 for Bruce or a total exemption of $70,398.16.

8b. This position differs from the Bureau's position only in the treatment of indirect expenses. This position treats the indirect expenses as if they had been shown on the return of the joint venture for 1960 and 1961 with a net operating loss carry-over of the 1960 expenses to the 1961 return, the ordinary income of the venture is computed to be $153,429.05 which is taken into the returns of the corporate partners as separate figures of $624,991.82 for total income and $471,562.77 for expenses included in separately itemized figures on the returns and resulting in a net figure of $153,429.05.

Upon the foregoing findings and all the evidence in the case the State Tax Commission decides:

A. The indirect expenses of the joint venture were properly "paid or incurred" by it for purposes of the deduction of trade or business expenses by the joint venture. Under the agreement of joint venture all expenses of the venture were to be paid by one of the partners and the payment by that partner out of its own bank account and in its own name is in every way equivalent to the payment of the expense by the venture itself.'

B. The inclusion of the indirect expenses in the joint venture return is proper. It is conceded that the indirect expenses are attributable to joint venture activities. It is apparent that the taxpayer filed out its return with only the expenses directly attributable to the long term contract in mind. The indirect expenses however while not qualifying for the completed contract method of accounting chosen by the taxpayer are still ordinary and necessary expenses of the venture. It is not contended that the indirect expenses here in issue are prohibited by Tax Law section 706(3). The additional exemption provided by Tax Law section 709(2) is computed on the basis of "the excess of the unincorporated business gross income over the deductions allowed

86. This position differs from the Bureau's position only in the treatment of indirect expenses. This position treats the indirect expenses as if they had been shown on the return of the joint venture for 1956 and 1957 with a net operating loss carryover of the 1956 expenses to the 1957 return, the ordinary income of the venture is computed to be $153,429.09 which is taken into the returns of the corporate partners as separate figures of $82,021.82 for total income and $71,407.27 for expenses included in separately itemized figures on the returns and resulting in a net figure of $153,429.09.

Upon the foregoing findings and all the evidence in the case the State Tax Commission decides:

A. The indirect expenses of the joint ventures were properly "paid or incurred" by it for purposes of the deduction of trade or business expenses by the joint venturer. Under the agreement of joint venture all expenses of the venture were to be paid by one of the partners and the payment by that partner out of its own bank account and in its own name is in every way equivalent to the payment of the expenses by the venture itself.

B. The deduction of the indirect expenses in the joint venturer's [illegible] exponents are attributable to joint venture activities. It is apparent that the taxpayer filed out the return with only the expenses directly attributable to the [illegible] in mind. The indirect expenses however will be net qualifying for the completed contract method of accounting chosen by the taxpayer are still ordinary and necessary expenses of the venture. It is not contended that the indirect expenses here in issue are prohibited by tax law section 706(3). The additional exemption provided by Tax Law section 708(3) is computed on the basis of "the excess of the partnership or business gross income over the deductions allowed

under...[Section 706] and Section 706 allows the trade or business expenses allowable for federal income tax purposes which include these indirect expenses in issue.

C. The inclusion of the indirect expenses on the joint venture return does not result in improper "double deductions." It is immaterial whether the indirect expenses are used on the joint venture return to reduce the net income which is then carried over to the returns of the partners, on the one hand, or whether, on the other hand, the income is carried into the partners returns without reduction by indirect expenses and the indirect expenses are carried over to the partner's returns separately. In fact, under Internal Revenue Code Section 702 and 703, each kind of item of gross income and deduction may be properly considered as being carried separately to the partners returns. In any event, the result here is that the indirect expenses in issue appear only once on the venture return and only once on the corporate return. There is no doubling of deductions on either return.

D. The inclusion of the indirect expenses on the joint venture return is required if the policy of the statute is to be carried out. If these expenses are not thus taken into account, they appear only on the corporate return and the corporation gets the benefit of them only to the extent of its allocation ratio attributable to its interstate business. Since, however, these expenses are attributable to the joint venture, whose activity is 100% within New York, the taxpayer should be entitled to benefit from them to the extent of 100%. This is accomplished by allowing the deduction of these expenses in full on the joint venture return and then eliminating their effect on the corporate return by means of the Section 709(2) computation.

under...[Section 706] and Section 708 allows the trade or business expenses allowable for federal income tax purposes when incurred in connection with the joint venture.

C. The inclusion of the indirect expenses on the joint venture return does not result in improper "double deductions." If a partner's share of the joint venture expenses are used to offset income earned by the venture of the partner, or the one hand, or whether, on the other hand, the income is carried into the partner returns without reduction by indirect expenses and the indirect expenses are carried over to the partner's returns separately. In fact, under Internal Revenue Code Section 702 and 703, each kind of item of gross income and deduction may be properly considered as being carried separately to the partners' returns. In any event, the result here is that the indirect expense in issue appears only once on the venture return and only once on the corporate return. There is no doubling deductions on either return.

D. The inclusion of the indirect expenses on the joint venture return is required if the policy of the statute is to be carried out. If these expenses are not thus taken into account, they appear only on the corporate return and the corporation gets the benefit of them only to the extent of its allocation ratio attributable to its corporate business. Since, however, these expenses are attributable to the joint venture, whose activity is 100% within New York, the taxpayer should be entitled to benefit from them to the extent of 100%. This is accomplished by allowing the deduction of these expenses in full on the joint venture return and then eliminating their effect on the corporate return by means of the section 706(2) computation.

E. The petition is allowed and the deficiency under date of April 13, 1965 is revised so as to reinstate the computation found in the statement of audit changes of March 4, 1965 showing a tax due of $2,777.20 and interest of $486.01 for a total of $3,263.21. This amount having been paid the taxpayers liability in this matter is discharged.

DATED: Albany, New York
August 29, 1972

STATE TAX COMMISSION

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER