STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the ~~Petition~~ Application

of

STRAUS, BLOSSER & McDOWELL

For a Redetermination of a Deficiency or a Refund of Unincorporated Business Taxes under Article(s) 16A of the Tax Law for the (Year(s) 1951 through 1959

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 11th day of July, 1973, she served the within Notice of Decision (or Determination) by (certified) mail upon Straus, Blosser & McDowell (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Straus, Blosser & McDowell
305 North Michigan Avenue
Chicago, Illinois 60601

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
11th day of July, 1973.

Lynn Wilson

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the ~~Petition~~ Applications

of

FREDERICK W. STRAUS-ARTHUR S. GROSSMAN-(BY HOMER L. GROSSMAN, As Trustee)-C. EDWIN MERCIER-MINTON M. CLUTE-MACKENZIE C. BAIRD-(each being a partner in STRAUS, BLOSSER & McDOWELL)

For a Redetermination of a Deficiency or a Refund of Unincorporated Business Taxes under Article(s) 16A of the Tax Law for the (Year(s) 1951 through 1959

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

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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
11th day of July, 1973.

Lynn Wilson

Martha Funaro

Frederick W. Straus
c/o Bernard Weisberg, Esq.
Gottlieb & Schwartz
111 W. Jackson Blvd.
Chicago, Illinois

Arthur S. Grossman
c/o Homer L. Grossman, Executor
305 North Michigan Avenue
Chicago, Illinois 60601

C. Edwin Mercier
1255 Buckingham
Grosse Point, Michigan

Minton M. Clute
33 Whitcomb
Grosse Point, Michigan

Mackenzie C. Baird
Oak Hill Road
Clarkston, Michigan

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the ~~Petition~~ Application

of

STRAUS, BLOSSER & McDOWELL

For a Redetermination of a Deficiency or a Refund of Unincorporated Business Taxes under Article(s) 16A of the Tax Law for the (Year(s) 1951 through 1959

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 11th day of July, 1973, she served the within Notice of Decision (or Determination) by (certified) mail upon William F. O'Connor, Esq. (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

William F. O'Connor, Esq.
c/o Kramer, Marx, Greenlee &
Backus, Esqs.
29 Broadway
New York, New York 10006

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
11th day of July, 1973.

Lynn Wilson

Martha Funaro

STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE
BUILDING 9, ROOM 214A
STATE CAMPUS
ALBANY, N. Y. 12226
AREA CODE 518
457-2655, 6, 7

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

STATE TAX COMMISSION
HEARING UNIT
EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

Dated: Albany, New York

July 11, 1973

Straus, Blosser & McDowell
305 North Michigan Avenue
Chicago, Illinois 60601

Gentlemen:

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

Please take further notice that pursuant to Section(s) **386j** of the Tax Law, any proceeding in court to review an adverse decision must be commenced within **90 Days** from 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 relative 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

Enc.

cc: Petitioner's Representative
Law Bureau

STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE
BUILDING 9, ROOM 214A
STATE CAMPUS
ALBANY, N. Y. 12226
AREA CODE 518
457-2655, 6, 7

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

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

Dated: Albany, New York

July 11, 1973

Frederick W. Straus
c/o Bernard Weisberg, Esq.
Gottlieb & Schwartz
111 W. Jackson Blvd.
Chicago, Illinois

Dear Sir:

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

Please take further notice that pursuant to Section(s) **386j** of the Tax Law, any proceeding in court to review an adverse decision must be commenced within 90 **Days** from 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 relative 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

Enc.

cc: Petitioner's Representative
Law Bureau

STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE
BUILDING 9, ROOM 214A
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ALBANY, N. Y. 12226
AREA CODE 518
457-2655, 6, 7

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

STATE TAX COMMISSION
HEARING UNIT
EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

Dated: Albany, New York

July 11, 1973

Arthur S. Grossman
c/o Homer L. Grossman, Executor
305 North Michigan Avenue
Chicago, Illinois 60601

Dear Mr. Grossman:

Please take notice of the CONSOLIDATED DETERMINATION of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to Section(s) 386j of the Tax Law, any proceeding in court to review an adverse decision must be commenced within 90 Days from the date of this notice.

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Very truly yours,

Nigel G. Wright

Nigel G. Wright
HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE
BUILDING 9, ROOM 214A
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STATE TAX COMMISSION
NORMAN F. GALLMAN, [redacted] PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

Dated: Albany, New York
July 11, 1973

C. Edwin Mercier
1255 Buckingham
Grosse Point, Michigan

Dear Mr. Mercier:

Please take notice of the CONSOLIDATED DETERMINATION of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to Section(s) 386j of the Tax Law, any proceeding in court to review an adverse decision must be commenced within 90 Days from 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 relative hereto may be addressed to the undersigned. These will be referred to the proper party for reply.

Very truly yours,

Nigel G. Wright
HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE
BUILDING 9, ROOM 214A
STATE CAMPUS
ALBANY, N. Y. 12226
AREA CODE 518
457-2655, 6, 7

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

STATE TAX COMMISSION
HEARING UNIT
EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

Dated: Albany, New York
July 11, 1973

Mackenzie C. Baird
Oak Hill Road
Clarkston, Michigan

Dear Mr. Baird:

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

Please take further notice that pursuant to Section(s) **386j** of the Tax Law, any proceeding in court to review an adverse decision must be commenced within **90 Days** from 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 relative 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

Enc.

cc: Petitioner's Representative
Law Bureau

STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE
BUILDING 9, ROOM 214A
STATE CAMPUS
ALBANY, N. Y. 12226
AREA CODE 518
457-2655, 6, 7

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

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

Dated: Albany, New York

July 11, 1973

Minton M. Clute
33 Whitcomb
Grosse Point, Michigan

Dear Mr. Clute:

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

Please take further notice that pursuant to Section(s) **386j** of the Tax Law, any proceeding in court to review an adverse decision must be commenced within **90 Days** from 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 relative 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

Enc.

cc: Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application :

of :

STRAUS, BLOSSER & McDOWELL :

for Revision or for Refund of Unincorporated Business Taxes under Article 16A of the Tax Law for the Years 1951 through 1959. :

CONSOLIDATED DETERMINATION

In the Matter of the Applications :

of :

FREDERICK W. STRAUS :
ARTHUR S. GROSSMAN
(BY HOMER L. GROSSMAN, AS TRUSTEE) :
C. EDWIN MERCIER
MINTON M. CLUTE :
MACKENZIE C. BAIRD
(each being a partner in STRAUS, :
BLOSSER & McDOWELL)
:

for Revision or for Refund of Personal Income Taxes under Article 16 of the Tax Law for the Years 1951 through 1957 and 1959. :

Straus, Blosser & McDowell filed an application under sections 386(j) and 374 of the Tax Law for revision of separate yearly assessments each issued under date of September 7, 1965, for the years 1951 through 1959 for unincorporated business taxes under Article 16A of the Tax Law.

Frederick W. Straus, Arthur S. Grossman by Homer L. Grossman, his trustee, C. Edwin Mercier, Minton M. Clute and Mackenzie C. Baird, (each being a partner in the form of Straus, Blosser & McDowell), filed applications under section 374 of the Tax Law

for revision of yearly assessments issued against each under date of September 7, 1965, for personal income taxes under Article 16 of the Tax Law for the years 1951 through 1957 and 1959.

Said applications were denied and demands for a hearing were filed. A hearing was duly held on October 21, 1970, at the offices of the State Tax Commission, 80 Centre Street, New York City, before Nigel G. Wright, Hearing Officer. William F. O'Connor, Esq., of Kramer, Marx, Greenlee & Backus, appeared (as is further explained in the findings of fact) on behalf of applicants Edward H. Best, Esq., appearing by Francis X. Boylan, Esq., represented the Income Tax Bureau. The record of said hearing has been duly examined and considered.

ISSUE

The primary issue in this case is whether a brokerage firm's income allocable to New York should be computed on a direct accounting basis or by a formula method under section 386(g) of the Tax Law. A secondary issue is the allowance of certain expenses under the direct method of accounting. Each individual partner concedes that the issues involved in his personal income tax liability are entirely derivative from the liability of the firm.

FINDINGS OF FACT

1. Straus, Blosser & McDowell was a securities broker with its main office in Chicago, Illinois. It opened an office

in New York in 1951 primarily for trading in over-the-counter securities. The New York office was managed by an employee of the firm. This office was continued until at least 1963.

2. The firm did not at any time file an unincorporated business tax return in New York.

3. The individual applicants were partners in Straus, Blosser & McDowell. They are all nonresidents of New York. They did not at any time file New York personal income tax returns.

4. The assessments in issue were computed on the assumption, conceded by taxpayer to be true, that the manager of the New York office was compensated at the rate of 50% of the profits of the New York office as computed by the firm. Certain deductions not shown in the firm's computation were offered to taxpayers if the amounts involved could be determined from the firm's Federal tax return. Taxpayers have failed to produce such return or to offer any alternative evidence. No evidence has been produced to show that the formula method of accounting would be superior in this case. Even under the formula method the firm's computations show that some tax would be due for the years 1952 and 1954 through 1958 though not so much as under the direct method of accounting.

5(a). The amounts of the assessments in issue and the taxable years to which they pertain are as follows:

	Tax	Interest to September 7, 1965	Penalty	Total
Straus, Blosser & McDowell 1951-1959	$12,253.96	$12,224.44	$612.75	$25,091.15

	Tax	Interest to September 7, 1965	Penalty	Total
Frederick W. Straus 1954-57, 1959	$780.51	$863.00	$39.03	$1,682.54
Arthur S. Grossman 1951, 1954-57, 1959	$440.44	$422.30	$22.01	$884.75
C. Edwin Mercier 1952-57, 1959	$3,480.84	$2,827.62	$174.05	$6,482.51
Minton M. Clute 1954-57, 1959	$879.24	$699.47	$43.94	$1,622.65
Mackenzie C. Baird 1952-57, 1959	$580.80	$502.58	$29.02	$1,112.40

5(b). The penalty and interest is imposed under section 376(a) of the Tax Law and is computed at a penalty of 5% of the basic tax due plus interest at 1% per month.

6. A preliminary notice of hearing was sent on February 5, 1970, and further notices were sent for hearing dates on May 7, 1970, and on October 21, 1970. These notices were sent to the firm at its last known address; 305 North Michigan Avenue, Chicago, Illinois, and to another address also on file; 39 South LaSalle Street, Chicago, Illinois. Notices were also sent to Frederick W. Straus and Arthur S. Grossman, at the same addresses in care of the firm, the only address on file for either of them. All of said notices were returned by the post office as undeliverable. Notices were also sent to C. Edwin Mercier, Minton M. Clute and Mackenzie C. Baird each at 666 Penobscot Building, Detroit 26, Michigan, the last known address for each. Said notices were apparently delivered.

7. An appearance was made at the hearing by William F. O'Connor, Esq., of Kramer, Marx, Greenless & Backus. Mr. O'Connor had filed the applications for each of the taxpayers, herein, he had powers of attorney from Straus, Mercier, Clute and Baird and had represented them in prior proceedings. At the hearing, however, Mr. O'Connor stated that his representation had ceased with respect to everyone except Mackenzie C. Baird, for whom he was appearing.

CONCLUSIONS OF LAW

As to the firm the burden of proof has not been met that the assessments are incorrect. As to the individual partners, there is no issue of law or fact remaining. Furthermore, the individual partners with the exception of Mr. Baird are in default in this proceeding.

The assessments including the penalties are found to be correct and are due.

DATED: Albany, New York
July 11, 1973

STATE TAX COMMISSION

Norman Goldman
COMMISSIONER

Bruce Manley
COMMISSIONER

Milton Koerner
COMMISSIONER

August 3, 1973

William J. McBrearty, Esq.
3180 Penobscot Building
Detroit, Michigan 48226

Re: C. Edwin Mercier

Dear Sir:

This is in response to your letter of July 19, 1973.

The basic tax controversy involved was an accounting method employed by the Straus, Blosser & McDowell firm which affected its proportion of New York income to total income. This led to an increase in New York tax due from the firm under our unincorporated business tax and also to an increase in New York tax due from each partner under our personal income tax. We "consolidate" cases for hearing and review by the Commission where, as here, the same facts and transactions pertain to all matters under review.

As to time limitations, New York law provides for assessments at any time when no returns are filed which was the case here. Once the assessment is timely made, there is no time limitation on a final determination by the Commission. I can appreciate your curiosity on this point and your client's possible consternation about the long delay in this case. The fact is that we have only three hearing officers to cover the whole State of New York and an eight year delay between assessment and final determination is not unusual.

Now for some more bad news and possibly some good news. There is another decision of the Commission against your client. That relates to the same matter for the year 1961. A separate "decision" was prepared for that year since liability is governed by our "new" income tax law effective since 1960. I am enclosing a copy if you don't already have one.

The possible good news is that I remember that Mr. O'Conner, whose appearance is noted in the determination, stating that there was some kind of agreement that one of the partners, possibly the Straus estate, was going to pick up the tab for at least some, if not all, the partners. You might write him, his address is: 29 Broadway, New York, New York.

Very truly yours,

Nigel G. Wright
Hearing Officer

NGW/maf
Enclosure

WILLIAM J. MCBREARTY
ATTORNEY AND COUNSELOR
3180 PENOBSCOT BUILDING
DETROIT, MICHIGAN 48226
TELEPHONE: 962-9717

July 19, 1973

Nigel G. Wright, Hearing Officer
State of New York
Department of Taxation And Finance
Building 9, Room 214A
State Campus
Albany, N.Y. 12226

Dear Mr. Wright:

The writer represents C. Edwin Mercier, of 1255 Buckingham, Grosse Pointe, Michigan, who has received notice that the Department of Taxation and Finance of the State of New York, is claiming that he as an ex partner of Straus, Blosser & McDowell, owes New York, $6,482.51 (tax-interest-penalty).

The cover letter which accompanied a "Consolidated Determination", of the State Tax Commission of New York states, "any inquiries.... may be addressed" to yourself.

These questions bother me, why did the Commission, of which you are a hearing officer, determine that C.E.Mercier, a partner in a defunct brokerage firm, was liable to New York for taxes?

A. Was it because (allegedly) the firm did not file an "unincorporated business tax return in New York?

B. Was it because as non residents of New York they did not file (allegedly) "New York personal income tax returns"?

I gather that your Commission has decided that this ex brokerage firm and various members, owed the State of New York income taxes, 1951 thru 1959, the "Determination" stating C.E.Mercier allegedly owes $6,482.51 (1952-57, 1959). Is there a statute of limitations, in New York which governs State claims (as well as individual or corporate claims)?

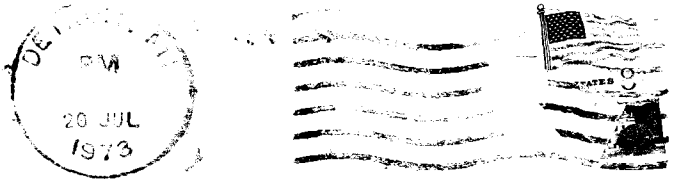
Your early reply to the above will be appreciated by my client and by myself.

Very truly yours,

William J. McBrearty

WJM/dm

WILLIAM J. McBREARTY
ATTORNEY AND COUNSELOR
3180 PENOBSCOT BUILDING
DETROIT, MICHIGAN 48226



Nigel G. Wright, Hearing Officer
State of New York
Department of Taxation And Finance
Building 9, Room 214A
State Campus
Albany, N.Y. 12226

STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE
BUILDING 9, ROOM 214A
STATE CAMPUS
ALBANY, N. Y. 12226
AREA CODE 518
457-2655, 6, 7

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

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

Dated: Albany, New York

July 11, 1973

Straus, Blosser & McDowell
305 North Michigan Avenue
Chicago, Illinois 60601

Gentlemen:

Please take notice of the CONSOLIDATED DETERMINATION of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to Section(s) 386j of the Tax Law, any proceeding in court to review an adverse decision must be commenced within 90 Days from the date of this notice.

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Very truly yours,

Nigel G. Wright
HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application :

of :

STRAUS, BLOSSER & McDOWELL :

for Revision or for Refund of Unincorporated Business Taxes under Article 16A of the Tax Law for the Years 1951 through 1959. :

CONSOLIDATED DETERMINATION

In the Matter of the Applications :

of :

FREDERICK W. STRAUS :
ARTHUR S. GROSSMAN
(BY HOMER L. GROSSMAN, AS TRUSTEE) :
C. EDWIN MERCIER
MINTON M. CLUTE :
MACKENZIE C. BAIRD
(each being a partner in STRAUS, :
BLOSSER & McDOWELL)
:

for Revision or for Refund of Personal Income Taxes under Article 16 of the Tax Law for the Years 1951 through 1957 and 1959. :

Straus, Blosser & McDowell filed an application under sections 386(j) and 374 of the Tax Law for revision of separate yearly assessments each issued under date of September 7, 1965, for the years 1951 through 1959 for unincorporated business taxes under Article 16A of the Tax Law.

Frederick W. Straus, Arthur S. Grossman by Homer L. Grossman, his trustee, C. Edwin Mercier, Minton M. Clute and Mackenzie C. Baird, (each being a partner in the form of Straus, Blosser & McDowell), filed applications under section 374 of the Tax Law

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application

of

STRAUSS, BIDDER & ROSENBERG

for Revision or Refund of Unincorporated Business Taxes under Article 16 of the Tax Law for the Years 1951 through 1959.

In the Matter of the Application

of

FREDERICK W. STRAUS,
ARTHUR S. GROSSMAN
(AY DONALD E. GROSSMAN, AS TRUSTEE)
C. ALVIN BRODSKY,
MINTON M. CLUTE
MACKENZIE C. DAIS
(each being a partner in STRAUS, BIDDER & ROSENBERG)

for Revision or Refund of Personal Income Taxes under Article 16 of the Tax Law for the Years 1951 through 1957 and 1959.

Straus, Bidder & Rosenberg filed an application under sections 386(f) and 374 of the Tax Law for revision or refund of assessments each issued under Case of Nonresident, 1957, for the years 1951 through 1959 for unincorporated business taxes under Article 16A of the Tax Law.

Frederick W. Straus, Arthur S. Grossman by Donald E. Grossman, his brother, C. Alvin Brodsky, Minton M. Clute and Mackenzie C. Dais, (each being a partner in the firm of Straus, Bidder & Rosenberg). Filed applications under section 374 of the Tax Law

for revision of yearly assessments issued against each under date of September 7, 1965, for personal income taxes under Article 16 of the Tax Law for the years 1951 through 1957 and 1959.

Said applications were denied and demands for a hearing were filed. A hearing was duly held on October 21, 1970, at the offices of the State Tax Commission, 80 Centre Street, New York City, before Nigel G. Wright, Hearing Officer. William F. O'Connor, Esq., of Kramer, Marx, Greenlee & Backus, appeared (as is further explained in the findings of fact) on behalf of applicants Edward H. Best, Esq., appearing by Francis X. Boylan, Esq., represented the Income Tax Bureau. The record of said hearing has been duly examined and considered.

ISSUE

The primary issue in this case is whether a brokerage firm's income allocable to New York should be computed on a direct accounting basis or by a formula method under section 386(g) of the Tax Law. A secondary issue is the allowance of certain expenses under the direct method of accounting. Each individual partner concedes that the issues involved in his personal income tax liability are entirely derivative from the liability of the firm.

FINDINGS OF FACT

1. Straus, Blosser & McDowell was a securities broker with its main office in Chicago, Illinois. It opened an office

the revision of yearly assessments issued against such under date of September 9, 1955, for personal income taxes under Article 16 of the Tax Law for the years 1951 through 1954 and 1959.

Said applications were denied and demands for a hearing were filed. A hearing was duly held on October 21, 1970, at the offices of the State Tax Commission, 80 Centre Street, New York City, before Nicol S. Wright, Hearing Officer. William K. O'Connor, Esq., of Kenny, Nunn, Greenlee & Radue, appeared (as is further evidenced in the findings of fact) on behalf of applicants Edward H. West, Esq., appearing by Francis X. Boylan, Esq., represented the Income Tax Bureau. The record of said hearing has been duly examined and considered.

ISSUE

The primary issue in this case is whether a non-resident firm's income allocable to New York should be computed on a direct accounting basis or by a formula method under section 386(a) of the tax law. A secondary issue is the allowance of certain expenses under the direct method of accounting. Petitioner individually and contends that the income involved is not personal income tax liability and entirely derivative from the liability of the firm.

FINDINGS OF FACT

1. Firms, Hosser & Maxwell was a securities broker with its main office in Chicago, Illinois. It opened an office

in New York in 1951 primarily for trading in over-the-counter securities. The New York office was managed by an employee of the firm. This office was continued until at least 1963.

2. The firm did not at any time file an unincorporated business tax return in New York.

3. The individual applicants were partners in Straus, Blosser & McDowell. They are all nonresidents of New York. They did not at any time file New York personal income tax returns.

4. The assessments in issue were computed on the assumption, conceded by taxpayer to be true, that the manager of the New York office was compensated at the rate of 50% of the profits of the New York office as computed by the firm. Certain deductions not shown in the firm's computation were offered by taxpayers if the amounts involved could be determined from the firm's Federal tax return. Taxpayers have failed to produce such return or to offer any alternative evidence. No evidence has been produced to show that the formula method of accounting would be superior in this case. Even under the formula method the firm's computations show that some tax would be due for the years 1952 and 1954 through 1958 though not so much as under the direct method of accounting.

5(a). The amounts of the assessments in issue and the taxable years to which they pertain are as follows:

	Tax	Interest to September 7, 1965	Penalty	Total
Straus, Blosser & McDowell 1951-1959	$12,253.96	$12,224.44	$612.75	$25,091.15

[illegible]

	Tax	Interest to September 7, 1965	Penalty	Total
Frederick W. Straus 1954-57, 1959	$780.51	$863.00	$39.03	$1,682.54
Arthur S. Grossman 1951, 1954-57, 1959	$440.44	$422.30	$22.01	$884.75
C. Edwin Mercier 1952-57, 1959	$3,480.84	$2,827.62	$174.05	$6,482.51
Minton M. Clute 1954-57, 1959	$879.24	$699.47	$43.94	$1,622.65
Mackenzie C. Baird 1952-57, 1959	$580.80	$502.58	$29.02	$1,112.40

5(b). The penalty and interest is imposed under section 376(a) of the Tax Law and is computed at a penalty of 5% of the basic tax due plus interest at 1% per month.

6. A preliminary notice of hearing was sent on February 5, 1970, and further notices were sent for hearing dates on May 7, 1970, and on October 21, 1970. These notices were sent to the firm at its last known address; 305 North Michigan Avenue, Chicago, Illinois, and to another address also on file; 39 South LaSalle Street, Chicago, Illinois. Notices were also sent to Frederick W. Straus and Arthur S. Grossman, at the same addresses in care of the firm, the only address on file for either of them. All of said notices were returned by the post office as undeliverable. Notices were also sent to C. Edwin Mercier, Minton M. Clute and Mackenzie C. Baird each at 666 Penobscot Building, Detroit 26, Michigan, the last known address for each. Said notices were apparently delivered.

7. An appearance was made at the hearing by William F. O'Connor, Esq., of Kramer, Marx, Greenless & Backus. Mr. O'Connor had filed the applications for each of the taxpayers, herein, he had powers of attorney from Straus, Mercier, Clute and Baird and had represented them in prior proceedings. At the hearing, however, Mr. O'Connor stated that his representation had ceased with respect to everyone except Mackenzie C. Baird, for whom he was appearing.

CONCLUSIONS OF LAW

As to the firm the burden of proof has not been met that the assessments are incorrect. As to the individual partners, there is no issue of law or fact remaining. Furthermore, the individual partners with the exception of Mr. Baird are in default in this proceeding.

The assessments including the penalties are found to be correct and are due.

DATED: Albany, New York
July 11, 1973

STATE TAX COMMISSION

Norman Gallman
COMMISSIONER

Bruce Wilcox
COMMISSIONER

Milton Kaufman
COMMISSIONER

[illegible] agreements executed by William F. O'Connor, Esq., of Albany, N.Y., Grossman & Nelson. Mr. O'Connor had filed [illegible] petitions for each of the taxpayers, herein, he had powers of attorney from Edwin, Herman, Chris and [illegible] and had [illegible] also to prior proceedings. As has been [illegible], however, Mr. O'Connor stated that his representation had ceased [illegible] respect to everyone except Mr. [illegible], for whom he was appearing.

CONCLUSIONS OF LAW

As to the first the issues of [illegible] have been not [illegible] and assessments are incorrect. As to the individual petitioners, [illegible] as there is no fact or law [illegible]. Furthermore, the individual petitioners with the exception of Mr. [illegible] are in default in [illegible] proceeding.

The assessments including the penalty are [illegible] to be correct and are due.

DATED: Albany, New York
July 11, 1972

STATE TAX COMMISSION

COMMISSIONER

COMMISSIONER

COMMISSIONER

AD 32 (11-72) 100M

STATE OF NEW YORK
Department of Taxation and Finance
STATE CAMPUS
ALBANY, N. Y. 12227

Straus, Blosser & McDowell
350 North Michigan Avenue
Chicago, Illinois 60601

Att: Ingel G. Wright

WP

STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE
BUILDING 9, ROOM 214A
STATE CAMPUS
ALBANY, N. Y. 12226
AREA CODE 518
457-2655, 6, 7

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

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

Dated: Albany, New York

July 11, 1973

Arthur S. Grossman
c/o Homer L. Grossman, Executor
305 North Michigan Avenue
Chicago, Illinois 60601

Dear Mr. Grossman:

Please take notice of the CONSOLIDATED DETERMINATION of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to Section(s) 386j of the Tax Law, any proceeding in court to review an adverse decision must be commenced within 90 Days from 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 relative hereto may be addressed to the undersigned. These will be referred to the proper party for reply.

Very truly yours,

Nigel G. Wright
HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application :

of :

STRAUS, BLOSSER & McDOWELL :

for Revision or for Refund of Unincorporated Business Taxes under Article 16A of the Tax Law for the Years 1951 through 1959. :

CONSOLIDATED DETERMINATION

In the Matter of the Applications :

of :

FREDERICK W. STRAUS :
ARTHUR S. GROSSMAN
(BY HOMER L. GROSSMAN, AS TRUSTEE) :
C. EDWIN MERCIER
MINTON M. CLUTE :
MACKENZIE C. BAIRD
(each being a partner in STRAUS, :
BLOSSER & McDOWELL)
:

for Revision or for Refund of Personal Income Taxes under Article 16 of the Tax Law for the Years 1951 through 1957 and 1959. :

Straus, Blosser & McDowell filed an application under sections 386(j) and 374 of the Tax Law for revision of separate yearly assessments each issued under date of September 7, 1965, for the years 1951 through 1959 for unincorporated business taxes under Article 16A of the Tax Law.

Frederick W. Straus, Arthur S. Grossman by Homer L. Grossman, his trustee, C. Edwin Mercier, Minton M. Clute and Mackenzie C. Baird, (each being a partner in the form of Straus, Blosser & McDowell), filed applications under section 374 of the Tax Law

for revision of yearly assessments issued against each under date of September 7, 1965, for personal income taxes under Article 16 of the Tax Law for the years 1951 through 1957 and 1959.

Said applications were denied and demands for a hearing were filed. A hearing was duly held on October 21, 1970, at the offices of the State Tax Commission, 80 Centre Street, New York City, before Nigel G. Wright, Hearing Officer. William F. O'Connor, Esq., of Kramer, Marx, Greenlee & Backus, appeared (as is further explained in the findings of fact) on behalf of applicants Edward H. Best, Esq., appearing by Francis X. Boylan, Esq., represented the Income Tax Bureau. The record of said hearing has been duly examined and considered.

ISSUE

The primary issue in this case is whether a brokerage firm's income allocable to New York should be computed on a direct accounting basis or by a formula method under section 386(g) of the Tax Law. A secondary issue is the allowance of certain expenses under the direct method of accounting. Each individual partner concedes that the issues involved in his personal income tax liability are entirely derivative from the liability of the firm.

FINDINGS OF FACT

1. Straus, Blosser & McDowell was a securities broker with its main office in Chicago, Illinois. It opened an office

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STATE OF NEW YORK

Department of Taxation and Finance

STATE CAMPUS

ALBANY, N. Y. 12227

Returned to sender
Insufficient address
Unable to forward
Refused
Unclaimed

D 10 1/2

Arthur L. Grossman
c/o Homer L. Grossman, Executor
305 North Michigan Avenue
Chicago, Illinois 60601

Att.
Nigel G. Wright
Bldg #9

in New York in 1951 primarily for trading in over-the-counter securities. The New York office was managed by an employee of the firm. This office was continued until at least 1963.

2. The firm did not at any time file an unincorporated business tax return in New York.

3. The individual applicants were partners in Straus, Blosser & McDowell. They are all nonresidents of New York. They did not at any time file New York personal income tax returns.

4. The assessments in issue were computed on the assumption, conceded by taxpayer to be true, that the manager of the New York office was compensated at the rate of 50% of the profits of the New York office as computed by the firm. Certain deductions not shown in the firm's computation were offered to taxpayers if the amounts involved could be determined from the firm's Federal tax return. Taxpayers have failed to produce such return or to offer any alternative evidence. No evidence has been produced to show that the formula method of accounting would be superior in this case. Even under the formula method the firm's computations show that some tax would be due for the years 1952 and 1954 through 1958 though not so much as under the direct method of accounting.

5(a). The amounts of the assessments in issue and the taxable years to which they pertain are as follows:

	Tax	Interest to September 7, 1965	Penalty	Total
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