

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

MAX BROOKS AND SYDELL BROOKS

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Unincorporated Business :
Taxes under Article(s) 23 of the :
Tax Law for the Year(s) or Period(s) :
1967, 1968 and 1969

State of New York
County of Albany

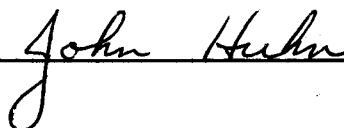
John Huhn, being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 13 day of December, 1977, she served the within
Notice of Decision by (certified) mail upon Max Brooks and
Sydell Brooks (~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. and Mrs. Max Brooks
53 West 23rd Street
New York, New York 10010
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~~
~~of the~~) petitioner herein and that the address set forth on said wrapper is the
last known address of the (~~representative of~~) petitioner.

Sworn to before me this

13 day of December, 1977





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

MAX BROOKS AND SYDELL BROOKS

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Unincorporated Business :
Taxes under Article (9) 23 of the :
Tax Law for the Year(s) ~~or Period(s)~~ :
1967, 1968 and 1969

State of New York
County of Albany

John Huhn, 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 13 day of December, 1977, she served the within

Notice of Decision by (certified) mail upon Bernard Greenberg,
Esq.

(representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed

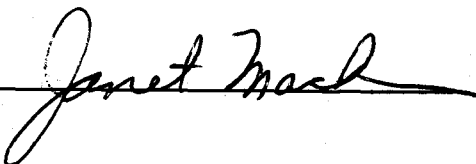
as follows: Bernard Greenberg, Esq.
30 East 42nd Street
New York, New York 10017

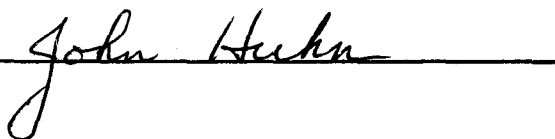
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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

13 day of December, 1977







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

December 13, 1977

JAMES H. TULLY JR., PRESIDENT
MILTON KOERNER
THOMAS H. LYNCH

**Mr. and Mrs. Max Brooks
53 West 23rd Street
New York, New York 10010**

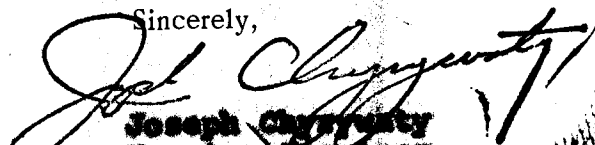
Dear Mr. and Mrs. Brooks:

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) **722** 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 the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,


**Joseph Chynoweth
Hearing Examiner**

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
MAX BROOKS and SYDELL BROOKS	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law for	:	
the Years 1967, 1968 and 1969.	:	

Petitioners, Max and Sydell Brooks, residing at 53 West 23rd Street, New York, New York 10010, filed a petition for redetermination of a deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the years 1967, 1968 and 1969 (File No. 01033).

A small claims hearing was held before William Valcarcel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on March 23, 1977 at 1:15 P.M. The petitioners appeared by Bernard Greenberg, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (William Fox, Esq., of counsel).

ISSUE

Whether losses from oil and gas wells located in the State of West Virginia were part of the petitioner's unincorporated business activities regularly carried on in New York State.

FINDINGS OF FACT

1. Petitioners, Max and Sydell Brooks, filed personal income tax returns and unincorporated business tax returns for the years 1967, 1968 and 1969, on which they included losses from oil wells located in the State of West Virginia.

2. Upon audit, the Income Tax Bureau issued two statements of audit changes in which it made a variety of adjustments which increased petitioners' tax liabilities under Articles 22 and 23 of the Tax Law. These adjustments included the exclusion of the oil and gas well losses for purposes of computing unincorporated business tax. Adjustments made by the Income Tax Bureau with respect to Article 22 of the Tax Law were not contested by the petitioners.

3. Petitioners, Max and Sydell Brooks, paid the additional taxes due, with interest, as shown on the two statements of audit changes. They filed a claim for refund for the year 1967 in which they indicated that they disagreed with the exclusion of the oil and gas well losses in computing the unincorporated business tax for said year. Petitioners' claim for a refund for the year 1967 was denied by the Income Tax Bureau. Petitioners timely filed a petition for redetermination for the years 1967, 1968 and 1969.

4. Petitioner Max Brooks was in the business of manufacturing slipcovers under the name and style of the Brookstyle Company, 53 West 23rd Street, New York, New York.

5. During the years 1967, 1968 and 1969, petitioner Max Brooks was also involved in the business of exploring for oil and gas. The drilling and exploration activities in this regard were performed in the State of West Virginia, through an agent known as Ray Brothers.

6. Upon receiving a report of a particular oil or gas well in West Virginia, the petitioner Max Brooks would purchase a percentage of the well. As drilling and

exploration expenses were incurred, he would be charged his proportionate share of these expenses by Ray Resources in New York, New York, who had engaged Ray Brothers to conduct the contracting and drilling activities in West Virginia.

7. Petitioner Max Brooks was kept informed by both Ray Resources and Ray Brothers as to the progress of the activities in West Virginia, and as to the amount of oil or gas, if any, produced. Upon discovery of oil or gas, petitioner Max Brooks would be allotted a proportionate share of the total amount produced by that well, according to the percentage of ownership originally purchased. Petitioner Max Brooks was free to sell or dispose of the oil or gas in any manner and at any price desired by him. All sales were negotiated and consummated in West Virginia by an agent located there and the proceeds were paid to the petitioner through an accounting firm in New York City.

8. Petitioner Max Brooks asserted that he used the Brookstyle Company and its employees to monitor the business and drilling activities in West Virginia. Therefore, he reasoned that these activities were part of the business activities performed by the Brookstyle Company. Accordingly, he contended that the losses derived from the oil or gas wells in West Virginia must be included with the income derived from the manufacturing activities in New York State.

9. Petitioner Max Brooks filed his Federal personal income tax returns showing the gross receipts and related expenses on two separate schedules for each business activity. In addition, he filed a tax return for the State of West Virginia and paid a tax on the gross receipts derived from his business activities in that state.

CONCLUSIONS OF LAW

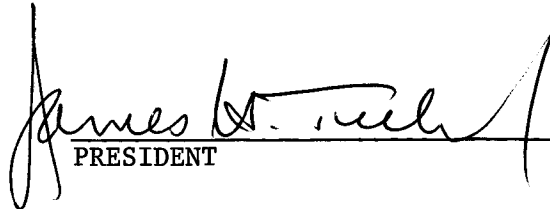
A. That the petitioner Max Brooks' investment participation in oil and gas wells located in West Virginia, and his participation in the sale of gas or oil derived therefrom, did not constitute an unincorporated business regularly carried on within the State of New York, in accordance with the meaning and intent of Article 23 of the Tax Law. Accordingly, losses incurred during the years 1967, 1968 and 1969 from oil and gas wells located in the State of West Virginia were not includible or part of the petitioner's unincorporated business activities regularly carried on in the State of New York.

B. That the petition of Max and Sydell Brooks is denied and the Notice of Disallowance issued February 26, 1973 is sustained.

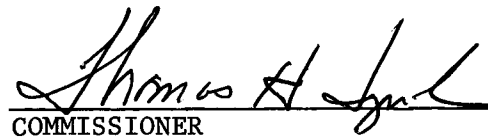
DATED: Albany, New York

STATE TAX COMMISSION

December 13, 1977


PRESIDENT


COMMISSIONER


COMMISSIONER