

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

OSCAR GRUSS & SON

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 ~~xx~~ 23 of the
Tax Law for the Year(s) 1963 and 1964.:

State of New York
County of Albany

JANET MACK

, 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 22nd day of December, 1975, she served the within
Notice of Decision ~~(for Determination)~~ by (certified) mail upon Oscar Gruss & Son,

~~(representative of)~~ the petitioner in the within

proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: Oscar Gruss & Son
80 Pine 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)~~
~~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

22nd day of December, 1975.

Mary Hoff

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

OSCAR GRUSS & SON

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) 1963 and 1964.:

State of New York
County of Albany

JANET MACK, 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 22nd day of December, 1975, she served the within
Notice of Decision (~~or Determination~~) by (certified) mail upon Jack Wong, CPA
(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Jack Wong, CPA
Oppenheim, Appel, Dixon & Co
One New York Plaza
New York, New York 10004
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

22nd day of December, 1975.

Mary Hoff

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

JAMES H. TULLY, JR., PRESIDENT

MILTON KOERNER

BUILDING 9, ROOM 107

STATE CAMPUS

ALBANY, N.Y. 12227

AREA CODE 518

STATE TAX COMMISSION

HEARING UNIT

PAUL GREENBERG

SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

MR. WRIGHT

MR. COBURN

MR. LEISNER

(518) 457-3850

457-3850

DATED: Albany, New York
December 22, 1975

Oscar Gruss & Son
80 Pine Street
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 ~~(9)~~ **722** of the Tax Law, any
proceeding in court to review an adverse deci-
sion must be commenced within **4 months**
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,


Paul E. Coburn

HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

AD-1.12 (8/73)

STATE TAX COMMISSION

A hearing was held at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 21, 1974, before Nigel G. Wright, Hearing Officer. The taxpayer was represented by Jack Wong, C.P.A. of Oppenheim, Appel, Dixon & Co., and the Income Tax Bureau was represented by Saul Heckelman, Esq., (Solomon Sies, Esq. of counsel). The State Tax Commission renders the following decision after due consideration of said record.

ISSUE

The primary issue in this case is whether an unincorporated business having no office without the state is subject to the allocation requirements of Section 707 of the Tax Law with respect to income or losses from oil leases without the state.

FINDINGS OF FACT

1. Petitioner, during the years 1963 and 1964, was engaged in the business of stock brokerage which included the purchase and sale of securities and investments for its own account and for its customers. The sole office maintained by the taxpayer was located in the State of New York.

2. Petitioner had made an investment in the 1963 exploration program of Occidental Petroleum Management Company and the Occidental Petroleum Corporation.

3. The investment in issue has been described as a joint venture titled "1963 Occidental Petroleum Exploration Program", in which the taxpayer acquired a "carried interest (economic interest)" as classified by the U.S. Treasury. However, petitioner has not tendered any documents by which the Commission can determine for itself the exact character of petitioner's interest in the oil leases here in issue and whether or not a joint venture was involved.

4. During the years 1963 and 1964, the oil investment losses in issue amount to \$52,417.19 and \$44,877.54 respectively.

5. The petitioner filed returns for unincorporated business tax for the years 1963 and 1964. This reported all income and loss as from New York sources and did not allocate income or loss in any way. Necessarily, the oil investment losses at issue herein were deducted from income.

6. The deficiency notice denies any deduction for the losses from the oil leases. It also makes other adjustments to income which are not here in issue.

CONCLUSIONS OF LAW

A. Title 20, Chapter II, Section 203.3, paragraph (b), subparagraph (3), of the Official Compilation Codes, Rules and Regulations of the State of New York

provides as follows: "whether the participants jointly or as a unit sell services or jointly sell any property produced or extracted by the partnership or other unincorporated organization. For example, if one or more individuals as "co-owners", either in fee or under a lease, undertake the development of "oil property" by agreeing to share in the costs and expenses of the development and in the production of the oil, the resulting partnership or joint venture will not be deemed to be engaged in the conduct of an unincorporated business as an entity if it is established that the participants reserved the right separately to take in kind and to dispose of their individual shares of the oil and if it is shown that the individuals or participants did not sell jointly or as a unit the oil produced by the property. In such a case, the individual member or participant in the operation of the property will be deemed to be engaged in an unincorporated business with respect to his participation in the group operation pertaining to the development of the property and the production of the oil and with respect to the individual or separate sales of the oil for his own account. If, in the example given above, the participants did not have the right to take their individual shares of the oil or if a joint sale of the oil had been made, the activities of the partnership or joint venture would constitute the carrying on of a taxable business by the partnership or venture as an entity."

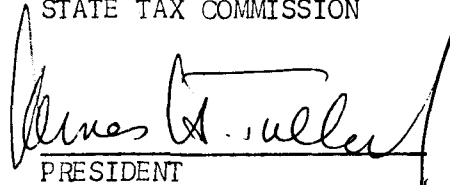
B. The record is barren as to the exact nature of these oil leases and the character of the joint venture. The taxpayer has in no way sustained the burden of proof to show that its interest in other than that clearly taxable under Section 203.3 of the Regulations.

C. There is no dispute that the oil leases in question concern oil wells without New York and an oil drilling operation is clearly a place of business.

D. The deficiency is correct and is due together with such further interest as shall be computed under Section 683 of the Tax Law.

DATED: Albany, New York
December 22, 1975

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER

COMMISSIONER