

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
AARON J. BROWN

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)~~ :
1963 & 1964, 1965 and 1966.

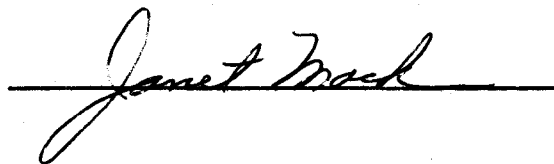
State of New York
County of Albany

Violet Walker , 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 14th day of June , 19 77, she served the within
Notice of Decision by (certified) mail upon Aaron J. Brown
~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. Aaron J. Brown
3725 South Ocean Drive
Hollywood, Florida
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

14th day of June , 1977.





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

AARON J. BROWN

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) ~~1963 & 1964~~ :
1963 & 1964, 1965 and 1966.

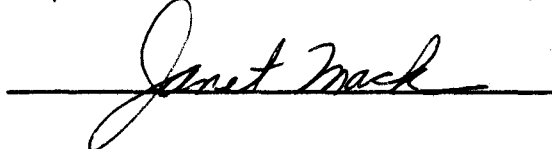
State of New York
County of Albany

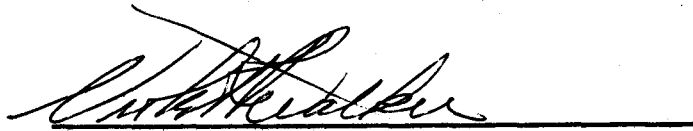
Violet Walker, being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 14th day of June, 1977, she served the within
Notice of Decision by (certified) mail upon Harold N. London
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Harold N. London
393 Seventh 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 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

14th day of June, 1977.







STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

TAX APPEALS BUREAU

STATE CAMPUS
ALBANY, N.Y. 12227

June 14, 1977

STATE TAX COMMISSION

ADDRESS YOUR REPLY TO

TELEPHONE: (518) 457-1723

Aaron J. Brown
3725 South Ocean Drive
Hollywood, Florida

Dear Mr. Brown:

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

Please take further notice that pursuant to
Section(3) **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.

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. They
will be referred to the proper party for reply.

Very truly yours,

PAUL B. COBURN
Supervising Tax
Hearing Officer

Enc.

cc: Petitioner's Representative:
Harold N. London
393 Seventh Avenue
New York, New York
Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :

of :

AARON J. BROWN :

DECISION

for Redetermination of Deficiency or :

for Refund of Unincorporated Business :

Tax under Article 23 of the Tax Law :

for the Years 1963, 1964, 1965 and 1966. :

Petitioner, Aaron J. Brown, has filed a petition for redetermination of deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the years 1963, 1964, 1965 and 1966 (File Nos. 12137549 and 52083284). A formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York on November 19, 1970 at 9:15 A.M. Petitioner appeared by Harold N. London, C.P.A. The Income Tax Bureau appeared by Edward H. Best, Esq., (Solomon Sies, Esq., of counsel).

FINDINGS OF FACT

1. Petitioner, Aaron J. Brown, filed unincorporated business tax returns for the years 1963, 1964, 1965 and 1966. He reported as taxable income on these returns the net income received by him from his unincorporated business, Downtown Shoe Outlet, Co., but omitted from taxable income the salary paid to him by Stuart Brooks, Inc.

2. On February 19, 1968 the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Aaron J. Brown, imposing unincorporated business tax upon the salary received by him during the years 1963 and 1964 from Stuart Brooks, Inc. upon the grounds that the salary income was derived from the performance of activities similar to those of the unincorporated business and, therefore, it constituted business income subject to unincorporated business tax and accordingly issued a Notice of Deficiency in the sum of \$1,378.39.

3. On September 29, 1969, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Aaron J. Brown, imposing unincorporated business tax upon the salary and a constructive dividend received by him during the years 1965 and 1966 upon the same grounds set forth in the prior paragraph and accordingly issued a Notice of Deficiency in the sum of \$1,514.88.

4. During the years 1963, 1964, 1965 and 1966, petitioner, Aaron J. Brown, was also the president and owner of all of the stock of Stuart Brooks, Inc. Stuart Brooks, Inc., as the New York metropolitan area franchise dealer for the Red Cross Shoe Division of U. S. Shoe Corp., operated a chain of six ladies shoe stores. It had gross sales of \$1,132,909.03, in 1963, \$1,217,935.56 in 1964, \$1,271,366.84 in 1965 and \$1,295,429.99 in 1966. It maintained its corporate office in one of its stores located at 403 Fifth Avenue. For his services to the corporation, petitioner was paid a salary of \$15,000.00 in 1963 and 1964, \$20,000.00 in 1965 and \$24,500.00 in 1966. Federal and New York State income tax and social security tax was withheld from his salary and he reflected this income as salary on his Federal and New York State income tax returns.

5. During the years 1963 through 1966, inclusive, petitioner, Aaron J. Brown, doing business under the trade name of Downtown Shoe Outlet, Co., operated a self-service outlet ladies shoe store on 14th Street in New York City and had gross sales of \$190,048.39 in 1963, \$189,382.19 in 1964, \$184,710.34 in 1965 and \$187,238.22 in 1966. Factory damaged Red Cross shoes represented approximately 90% of the merchandise sold.

6. During the years 1963 through 1966, inclusive, petitioner, Aaron J. Brown, devoted 80% to 90% of his time to the business affairs of Stuart Brooks, Inc. and the balance of his time to the affairs of Downtown Shoe Outlet Co. Petitioner's main function was to buy shoes in conformity with the then current styles. Brown also bought merchandise for Downtown Shoe Outlet Co. His main function on behalf of the unincorporated business consisted of general supervision of its activities. It is conceded that all of the bookkeeping and accounting work of Downtown Shoe Outlet Co. and Stuart Brooks, Inc. was done by the employees of Stuart Brooks, Inc. at its corporate office.

CONCLUSIONS OF LAW

A. That the services rendered by petitioner, Aaron J. Brown, during the years 1963, 1964, 1965 and 1966 as an officer of Stuart Brooks, Inc. were so integrated and interrelated with his activities in connection with his unincorporated business, Downtown Shoe Outlet Co., as to constitute a part of a business regularly carried on by him and, therefore, the salary received by him for services as an officer of the corporation and the constructive dividend were subject to the imposition of unincorporated business tax in accordance with the meaning and intent of section 703(b)

of the Tax Law.

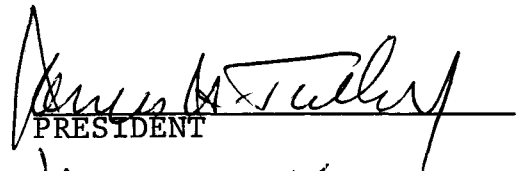
B. That the aforesaid activities of petitioner Aaron J. Brown during the years 1963, 1964, 1965 and 1966 on behalf of Stuart Brooks, Inc. constituted the carrying on of an unincorporated business and his income derived therefrom was subject to unincorporated business tax in accordance with the meaning and intent of section 703 of the Tax Law.

C. That the petition of Aaron J. Brown is denied and the Notice of Deficiency issued February 19, 1968 and the Notice of Deficiency issued September 29, 1969 is sustained.

DATED: Albany, New York

June 14, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER