

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
SIEGEL BROTHERS SHOES

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Unincorporated Business Taxes :
Taxes under Article(s) 23 of the :
Tax Law for the Year(s) or Period(s) :
6/25/68

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 24th day of June, 1977, she served the within
Notice of Decision by (certified) mail upon Irwin G. Porges, Esq.

(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Irwin G. Porges, Esq.
11 West 42nd 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 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

24th day of June, 1977





STATE OF NEW YORK.
STATE TAX COMMISSION

In the Matter of the Petition

of
SIEGEL BROTHERS SHOES

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Unincorporated Business Taxes: :
Taxes under Article (s) 23 of the :
Tax Law for the ~~XXXXXX~~ Period(s) :
6/25/68

State of New York
County of Albany

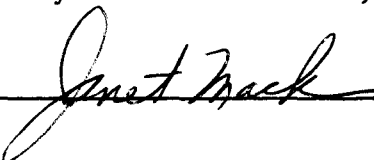
Violet Walker , being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 24th day of June , 19 77, she served the within
Notice of Decision by (certified) mail upon Siegel Brothers Shoes

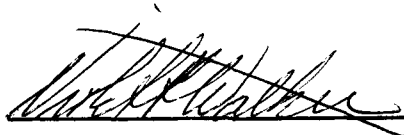
~~XXXXXX~~ (representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Siegel Brothers Shoes
c/o Irwin G. Porges
11 West 42nd Street
New York, New York
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the (~~representative~~
~~XXXXXX~~) 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

24th day of June , 1977.







STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU

STATE CAMPUS
ALBANY, N.Y. 12227

ADDRESS YOUR REPLY TO

June 24, 1977

TELEPHONE: (518) **457-1723**

Siegel Brothers Shoes
c/o Irwin G. Porges
11 West 42nd Street
New York, New York

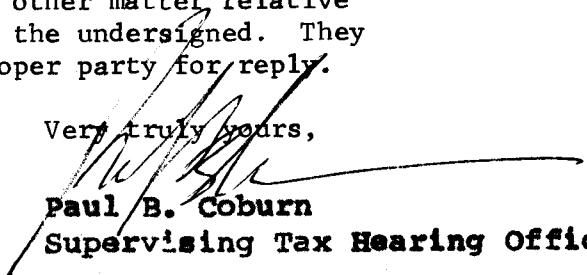
Gentlemen:

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

Please take further notice that pursuant to
Section ~~(ss)~~ **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:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
SEYMOUR GRABEL, STANLEY T. ROBERTS	:	
and IRWIN G. PORGES, Individually	:	
and as co-partners d/b/u the firm	:	
name and style of	:	DECISION
	:	
SIEGEL BROTHERS SHOES	:	
	:	
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law for	:	
the Period Ended June 25, 1968.	:	

Petitioners, Seymour Grabel, Stanley T. Roberts and Irwin G. Porges, d/b/u the firm name and style of Siegel Brothers Shoes (hereinafter Siegel), 11 West 42nd Street, New York, New York 10036, filed a petition for redetermination of a deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the period ended June 25, 1968. (File No. 01382)

A formal hearing was held before Edward L. Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on August 12, 1976 at 10:45 a.m. Petitioners appeared by Irwin G. Porges, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Solomon Sies, Esq. of counsel).

ISSUES

I. Whether the sale by all the individual partners of the interest of each in the assets, inventory and good will of the partnership resulted in a liquidation of the partnership subject to unincorporated business tax under Article 23 of the Tax Law.

II. Whether gain realized by individual partners on the sale of their several interests in the partnership was properly taxed in the aggregate, as taxable income of the partnership under section 705 of the Tax Law.

FINDINGS OF FACT

1. Petitioner, Siegel, timely filed a New York State income and unincorporated business partnership return for the fiscal year begun March 1, 1968 and ended June 25, 1968.

2. A Notice of Deficiency in unincorporated business tax for the period ended June 25, 1968 was issued on September 25, 1972 against petitioner, Siegel, indicating a tax deficiency of \$11,864.47, plus interest of \$3,025.44, for a total of \$14,889.91. A notation on the Notice of Deficiency advised petitioner, Siegel, that the Income Tax Bureau had credited the taxpayer with an overpayment for the tax year ended February 29, 1968 of \$228.53, plus interest of \$58.81, for a total reduction of \$287.34, resulting in an unpaid tax balance due of \$14,602.57. A Statement of Audit

Changes issued January 10, 1972 and revised after formal conference, was issued September 25, 1972, detailing the recomputation of unincorporated business taxes for the year ended February 29, 1968, and for the period ending June 25, 1968.

3. Petitioner, Siegel, petitioned for redetermination of the deficiency and, by a consent, extended the period of limitation upon assessment of personal income and unincorporated business tax to October 15, 1972.

4. Petitioner, Siegel, was a partnership with three equal partners, which operated a retail shoe business that commenced on February 15, 1967, at 395 Sixth Avenue, New York, New York.

5. On June 25, 1968, the three partners doing business under the firm name and style of "Siegel Brothers Shoes" each sold his undivided one-third interest in the partnership inventory, assets, good will and the right to use the business name of "Siegel Brothers Shoes" to two individuals.

6. On October 15, 1968, petitioner, Siegel, filed a New York State income and partnership return marked "Final Return" for the period March 1, 1968 through June 25, 1968. On the return, petitioner, Siegel, reported ordinary income of \$53,282.97, and taxable business income of \$44,693.10. The unincorporated business tax on that income was reported as \$2,681.59 and paid to the Income Tax

Bureau. No gain or loss was shown from the sale or exchange of partnership capital assets.

7. A "Final Return" was filed in October of 1968 by petitioner, Siegel, on a U.S. Partnership Return of Income, Form 1065. It showed the same ordinary income as was reported on the New York State Income and Partnership Return for the period ended June 25, 1968. No capital gains or losses for the partnership were reported.

8. The accountant for petitioner, Siegel, one Irwin G. Porges, filed his own U.S. Individual Income Tax Return (Form 1040) for 1968, and reported thereon a capital gain of \$74,974.00 from the sale of his one-third partnership in petitioner, Siegel. He made the same tax disposition of the gain on the sale of their partnership interest in petitioner, Siegel, for each of the two remaining partners.

9. The Income Tax Bureau found that on the transfer of the partners' interests in the petitioner, Siegel, the partnership had realized a capital gain of \$224,922.00 which was includable in the gross income of the partnership for the tax period ended June 25, 1968.

10. The deficiency of \$14,602.57 in unincorporated business tax has not been paid.

CONCLUSIONS OF LAW

A. That the sale by all the partners of their several interests in the partnership effectuated a liquidation of that business. Income and gain from any property employed in the business, or from liquidation of the business constitute unincorporated business gross income, in accordance with sections 703(a) and 705(a) of the Tax Law.

B. That the petitioner, Siegel, gave recognition to the termination of the partnership as of June 25, 1968 when the petitioner, Siegel, filed a U.S. Partnership Income Tax Return in accordance with I.R.C. Section 708(b)(1)(B). There is no Federal income tax on partnership business. There is no Federal Internal Revenue Code definition of unincorporated business gross income comparable to that set out in the alternative in the New York State Tax Law, section 705(a).

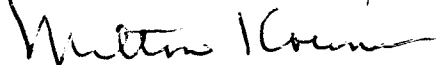
C. That the petition of Siegel Brothers Shoes is denied and the Notice of Deficiency dated September 25, 1972 is sustained.

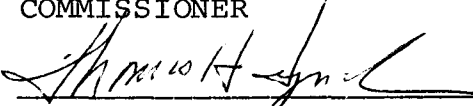
D. That, pursuant to the Tax Law, interest shall be added to the total amount due until paid.

DATED: Albany, New York
June 24, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER