

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
GREGORY and SONS

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Unincorporated Business :  
Taxes under Article (8) 16-A of the :  
Tax Law for the ~~XXXXXXX~~ Period ~~XXX~~ :  
May 2, 1955 through December 31, 1955 and  
for the Years 1956 and 1957.

State of New York  
County of Albany

John Huhn

, being duly sworn, deposes and says that

~~he~~ is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 6th day of April , 1979, ~~he~~ served the within  
Notice of Determination by (~~certified~~) mail upon Gregory and Sons

(representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Gregory and Sons  
72 Wall 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

6th day of April , 1979.

Marilyn J. Papineau

John Huhn

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
GREGORY and SONS

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)~~ 16-A of the :  
Tax Law for the ~~XXXXXXX~~ Period ~~XX~~ :  
May 2, 1955 through December 31, 1955 and  
for the Years 1956 and 1957.

State of New York  
County of Albany

John Huhn , being duly sworn, deposes and says that  
he is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 6th day of April , 19 79, he served the within  
Notice of Determination by (~~certified~~) mail upon Biller & Snyder, CPA

(representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Biller & Snyder, CPA  
75 Maiden Lane  
New York, New York 10038

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

th day of April , 19 79

Marilyn J. Papineau

John Huhn



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

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

April 6, 1979

Gregory and Sons  
72 Wall Street  
New York, New York

Gentlemen:

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

You have now exhausted your right of review at the administrative level. Pursuant to section ~~(b)~~ **386(j)** 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 **90 days** 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,

MICHAEL ALEXANDER  
SUPERVISING TAX HEARING OFFICER

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

---

In the Matter of the Application	:	
of	:	
GREGORY and SONS	:	DETERMINATION
for Revision of a Determination or for	:	
Refund of Unincorporated Business Tax	:	
under Article 16-A of the Tax Law for	:	
the Period May 2, 1955 through December 31,	:	
1955 and for the Years 1956 and 1957.	:	

---

Applicant, Gregory and Sons, 72 Wall Street, New York, New York, filed an application for revision of a determination or for refund of unincorporated business tax under Article 16-A of the Tax Law for the period May 2, 1955 through December 31, 1955 and for the years 1956 and 1957 (File No. 01915).

A formal hearing was held before Francis X. Boylan, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York, on November 12 and 13, 1969. Applicant appeared by Biller and Snyder, CPA's (Aaron Nasper, Martin Wallace and Philip F. Rauch, of counsel). The Income Tax Bureau appeared by Edward H. Best, Esq. (Alexander Weiss, Esq., of counsel).

#### ISSUES

I. Whether income from cash and securities in partners' subordinated capital accounts was subject to unincorporated business tax.

II. Whether interest payments made in connection with borrowed cash or securities constituted interest on partners' capital and, thus, was not deductible by applicant for unincorporated business tax purposes.

FINDINGS OF FACT

1. Applicant, Gregory and Sons, a partnership during each of the taxable years involved, was engaged in business as a securities broker in the State of New York.

2. Certain general partners of the firm borrowed cash and securities from persons who were not members or employees of the firm, who had agreed to subordinate their liens to claims of the partnership creditors. The borrowed assets were then brought into the partnership through the partners' individual accounts. The cash and securities were considered capital of the firm under the partnership agreement and under Rule 325 of the New York Stock Exchange which required an amount of capital sufficient to meet the required minimum Debt to Net Capital Ratio.

3. Although applicant paid interest on the borrowed assets directly to the outside lenders as a convenience, such interest was charged to the accounts of the partners.

4. On April 12, 1962, notices of additional assessment were issued to Gregory and Sons by the Income Tax Bureau. Prior to being revised, the assessments provided as follows:

Year	May 2, 1955 to <u>Dec. 31, 1955</u>	<u>1956</u>	<u>1957</u>
Assessment No.	FA94123	FA94124	FA94125
Total Additional Tax	\$1,398.57	\$1,921.59	\$1,594.04

DESCRIPTION

A.	Disallowance of Travel and Entertainment	\$ 4,200.00	\$ 8,400.00	\$ 7,500.00
B.	Repairs and Depreciation	\$ 9,580.62	\$ 7,542.29	-
C.	Improper Deduction			900.00
D.	Deduction for Partners' Services Disallowed	\$ 5,000.00	\$ 5,000.00	-
E.	Interest, Dividends and Capital Gains and/or Losses Omitted	\$824,884.45	\$ 2,582.56	\$174,682.04
F.	Interest Expense Reduced to Eliminate Payments to Member Partner Con- sidered to be a Distri- bution of Profits	\$ 25,927.06	\$ 39,585.00	\$ 40,137.17

5. Applicant did not contest Items A through D. On December 26, 1962, applicant filed an Application for Revision or Refund of Unincorporated Business Taxes on Form IT-113. On April 23, 1965, applicant was notified that the notices of additional assessment were revised in accordance with Shearson-Hammill & Co. v. State Tax Commission (15 N.Y. 2d 608 aff'g. Supreme Ct. A.D. 3rd Dept., July 15, 1963), in which interest, dividends and capital gains and/or losses (all of which relate to Item "E" were excludable from the computation of unincorporated business tax liability. On July 1, 1965, applicant filed an application demanding that a hearing be held as a result of the prior application having been denied in part on April 23, 1965.

6. The sole remaining issue pertains to Item "F" interest expenses reduced to eliminate payment to member partners considered to be a distribution of profits. Applicant contended that the interest payments were deductible as interest paid on the debt of the partnership and were an ordinary and necessary business expense for unincorporated business tax purposes.

CONCLUSIONS OF LAW

A. That the income from interest, dividends and capital gains and/or losses derived from the subordinated "capital" accounts of partners in applicant's brokerage firm (used as security for partnership creditors and capital contributions) was not subject to unincorporated business tax (Shearson-Hamill & Co. v. State Tax Commission, 15 N.Y. 2d 608, aff'g Supreme Ct. A.D. 3rd Dept.).

B. That the interest payments on the borrowed securities or cash constituted payment of interest on partners' capital under Article 12 of the Unincorporated Business Income Tax Regulations (Article 16-A of the Tax Law) and were not deductible by applicant for unincorporated business tax purposes.

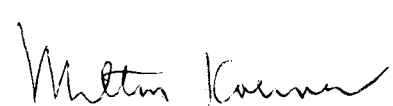
C. That the application of Gregory and Sons is granted to the extent of allowing the interest dividends and capital gains and/or losses previously omitted from the partnership return, but is in all other respects denied.

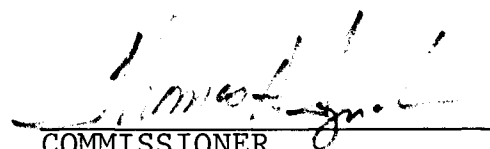
DATED: Albany, New York

STATE TAX COMMISSION

April 6, 1979

\_\_\_\_\_  
PRESIDENT

  
\_\_\_\_\_  
COMMISSIONER

  
\_\_\_\_\_  
COMMISSIONER



New York State Department of  
**TAXATION and FINANCE**

TAX APPEALS BUREAU

TO.....Berthlyn Davis.....

No better address.

GREGORY AND SONS

May 1, 1979

Michael Alexander

M-75 (5/76)





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

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

April 6, 1979

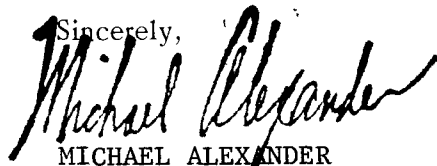
Gregory and Sons  
72 Wall Street  
New York, New York

Gentlemen:

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

You have now exhausted your right of review at the administrative level. Pursuant to section ~~(x)~~ 386(j) 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 **90 days** 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,  
  
MICHAEL ALEXANDER  
SUPERVISING TAX HEARING OFFICER

cc: Petitioner's Representative

Taxing Bureau's Representative

TA-26 (4-76) 25M

STATE OF NEW YORK

Department of Taxation and Finance

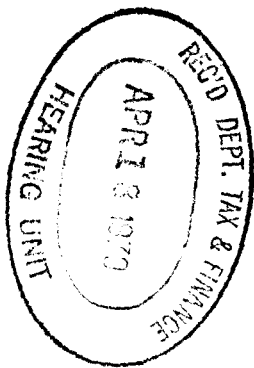
TAX APPEALS BUREAU

STATE CAMPUS

ALBANY, N. Y. 12227

**FORMAL HEARING**

Gregory and Sons  
72 Wall Street  
New York, New York



STATE OF NEW YORK

STATE TAX COMMISSION

---

In the Matter of the Application	:	
of	:	
GREGORY and SONS	:	DETERMINATION
for Revision of a Determination or for	:	
Refund of Unincorporated Business Tax	:	
under Article 16-A of the Tax Law for	:	
the Period May 2, 1955 through December 31,	:	
1955 and for the Years 1956 and 1957.	:	

---

Applicant, Gregory and Sons, 72 Wall Street, New York, New York, filed an application for revision of a determination or for refund of unincorporated business tax under Article 16-A of the Tax Law for the period May 2, 1955 through December 31, 1955 and for the years 1956 and 1957 (File No. 01915).

A formal hearing was held before Francis X. Boylan, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York, on November 12 and 13, 1969. Applicant appeared by Biller and Snyder, CPA's (Aaron Nasper, Martin Wallace and Philip F. Rauch, of counsel). The Income Tax Bureau appeared by Edward H. Best, Esq. (Alexander Weiss, Esq., of counsel).

ISSUES

I. Whether income from cash and securities in partners' subordinated capital accounts was subject to unincorporated business tax.

II. Whether interest payments made in connection with borrowed cash or securities constituted interest on partners' capital and, thus, was not deductible by applicant for unincorporated business tax purposes.

FINDINGS OF FACT

1. Applicant, Gregory and Sons, a partnership during each of the taxable years involved, was engaged in business as a securities broker in the State of New York.

2. Certain general partners of the firm borrowed cash and securities from persons who were not members or employees of the firm, who had agreed to subordinate their liens to claims of the partnership creditors. The borrowed assets were then brought into the partnership through the partners' individual accounts. The cash and securities were considered capital of the firm under the partnership agreement and under Rule 325 of the New York Stock Exchange which required an amount of capital sufficient to meet the required minimum Debt to Net Capital Ratio.

3. Although applicant paid interest on the borrowed assets directly to the outside lenders as a convenience, such interest was charged to the accounts of the partners.

4. On April 12, 1962, notices of additional assessment were issued to Gregory and Sons by the Income Tax Bureau. Prior to being revised, the assessments provided as follows:

Year	May 2, 1955 to <u>Dec. 31, 1955</u>	<u>1956</u>	<u>1957</u>
Assessment No.	FA94123	FA94124	FA94125
Total Additional Tax	\$1,398.57	\$1,921.59	\$1,594.04

DESCRIPTION

A. Disallowance of Travel and Entertainment	\$ 4,200.00	\$ 8,400.00	\$ 7,500.00
B. Repairs and Depreciation	\$ 9,580.62	\$ 7,542.29	-
C. Improper Deduction			900.00
D. Deduction for Partners' Services Disallowed	\$ 5,000.00	\$ 5,000.00	-
E. Interest, Dividends and Capital Gains and/or Losses Omitted	\$824,884.45	\$ 2,582.56	\$174,682.04
F. Interest Expense Reduced to Eliminate Payments to Member Partner Considered to be a Distribution of Profits	\$ 25,927.06	\$ 39,585.00	\$ 40,137.17

5. Applicant did not contest Items A through D. On December 26, 1962, applicant filed an "Application for Revision or Refund of Unincorporated Business Taxes" on Form IT-113. On April 23, 1965, applicant was notified that the notices of additional assessment were revised in accordance with Shearson-Hamill & Co. v. State Tax Commission (15 N.Y. 2d 608 aff'g. Supreme Ct. A.D. 3rd Dept., July 15, 1963), in which interest, dividends and capital gains and/or losses (all of which relate to Item "E" were excludable from the computation of unincorporated business tax liability. On July 1, 1965, applicant filed an application demanding that a hearing be held as a result of the prior application having been denied in part on April 23, 1965.

6. The sole remaining issue pertains to Item "F" interest expenses reduced to eliminate payment to member partners considered to be a distribution of profits. Applicant contended that the interest payments were deductible as interest paid on the debt of the partnership and were an ordinary and necessary business expense for unincorporated business tax purposes.

CONCLUSIONS OF LAW

A. That the income from interest, dividends and capital gains and/or losses derived from the subordinated "capital" accounts of partners in applicant's brokerage firm (used as security for partnership creditors and capital contributions) was not subject to unincorporated business tax (Shearson-Hamill & Co. v. State Tax Commission, 15 N.Y. 2d 608, aff'g Supreme Ct. A.D. 3rd Dept.).

B. That the interest payments on the borrowed securities or cash constituted payment of interest on partners' capital under Article 12 of the Unincorporated Business Income Tax Regulations (Article 16-A of the Tax Law) and were not deductible by applicant for unincorporated business tax purposes.

C. That the application of Gregory and Sons is granted to the extent of allowing the interest dividends and capital gains and/or losses previously omitted from the partnership return, but is in all other respects denied.

DATED: Albany, New York

STATE TAX COMMISSION

April 6, 1979

PRESIDENT

Milton Kravitz  
COMMISSIONER

Thomas H. L.  
COMMISSIONER