

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Abrahams Brothers :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of
Unincorporated Business Tax :
under Article 23 of the Tax Law
for the Fiscal Years Ending 1/31/73 1974 & 1975. :

State of New York

County of Albany

Jay Vredenburg, 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 12th day of December, 1980, he served the within notice of Decision by certified mail upon Abrahams Brothers, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Abrahams Brothers
119 W. 40th St.
New York, NY 10018

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 petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
12th day of December, 1980.

Jean Schutt

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
of

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State of New York
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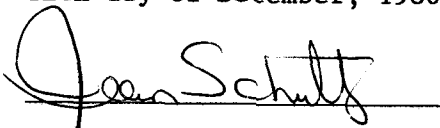
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 12th day of December, 1980, he served the within notice of Decision by certified mail upon T. Gorman Reilly the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

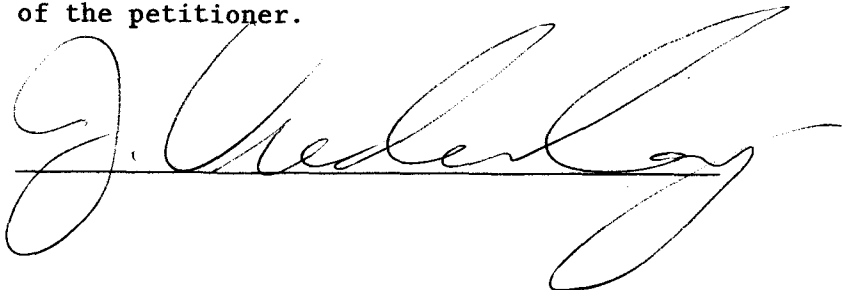
Mr. T. Gorman Reilly
Hahn, Hessen, Marglis & Ryan
350 Fifth Ave.
New York, NY 10118

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
12th day of December, 1980.





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

December 12, 1980

Abrahams Brothers
119 W. 40th St.
New York, NY 10018

Gentlemen:

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:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
T. Gorman Reilly
Hahn, Hessen, Marglis & Ryan
350 Fifth Ave.
New York, NY 10118
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
ABRAHAMS BROTHERS	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business Tax :	:	
under Article 23 of the Tax Law for the	:	
Fiscal Years Ending January 31, 1973,	:	
1974 and 1975.	:	

Petitioner, Abrahams Brothers, 119 West 40th Street, New York, New York 10018, filed a petition for redetermination of a deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the fiscal years ending January 31, 1973, 1974 and 1975 (File No. 19664).

A formal hearing was held before Edward Goodell, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on March 20, 1979 at 1:15 P.M. Petitioner appeared by Hahn, Hessen, Margolis & Ryan, Esqs. (T. Gorman Reilly, Esq., of counsel) and by Main Lafrentz & Co. (Jay L. Dengrove, CPA). The Audit Division appeared by Peter Crotty, Esq. (Aliza Schwadron, Esq., of counsel).

ISSUE

Whether Abrahams Brothers, a New York limited partnership, was entitled to allocate part of its unincorporated business income for the tax years at issue to sources outside New York State.

FINDINGS OF FACT

1. Petitioner Abrahams Brothers timely filed New York State partnership returns for the fiscal years ending January 31, 1973, 1974 and 1975, allocating to New York State in the unincorporated business tax schedules contained in said returns a portion of the excess of its unincorporated business gross

income over its unincorporated business deductions in accordance with an allocation formula which is not the subject of dispute in this proceeding.

2. Petitioner, Abrahams Brothers, in response to the request in Schedule U-B of its said New York State partnership returns for the fiscal years ended January 31, 1974 and January 31, 1975, for a listing of "all places, both inside and outside New York State, where you carry on business", supplied the following information for each of said fiscal years as to the (1) "street address", (2) "city and state" and (3) "description", to wit, (1) "119 West 40th Street", (2) "New York, N.Y." and (3) "Buying Office - Rented".

3. On April 14, 1977, the Audit Division issued a Statement of Audit Changes against petitioner, Abrahams Brothers, revising its allocation of unincorporated business income for the tax years 1973, 1974 and 1975 by allocating all of it to New York State for the stated reason that "the allocation of business income is disallowed since a place of business is not maintained outside of the state". Accordingly, a Notice of Deficiency was issued against the petitioner Abrahams Brothers on April 14, 1977 imposing additional unincorporated business tax for the fiscal years ending January 31, 1973, January 31, 1974 and January 31, 1975 amounting in the aggregate to \$12,848.44, together with interest thereon of \$1,984.83, for a total deficiency of \$14,833.27.

4. Petitioner, Abrahams Brothers, timely filed a petition for redetermination of deficiency or for refund of unincorporated business tax for the taxable years 1973, 1974 and 1975.

5. Abrahams Brothers is a New York State limited partnership whose partners during the period from 1971 through 1975 were twelve in number, of whom three were general partners, namely Sherman Abrahams, his son Donald Abrahams and Sherman Abrahams' brother, Bernard Abrahams.

During the said period, seven of the said twelve partners were active in the conduct of the business of Abrahams Brothers, namely Sherman Abrahams, Philip M. Adler III, Herbert Levy, John Schultz and Paul Trier and, in addition, the aforesaid Bernard Abrahams and Donald Abrahams, brother and son respectively of Sherman Abrahams.

6. (a) In 1911 Bernard Abrahams, brother of Sherman Abrahams, established a retail business for the sale of womens' ready-to-wear clothing in a store located in Davenport, Iowa, where the said Bernard Abrahams and his two brothers, the said Sherman Abrahams and Herbin Abrahams, then lived.

(b) At some point in time between 1911 and the early 1930's, the said Bernard Abrahams, together with his said two brothers, formed the partnership of Abrahams Brothers for the purpose of engaging with them in the business of selling at retail women's ready-to-wear clothing.

(c) Sometime in the early 1930's, in connection with the development of the said partnership business, Sherman Abrahams moved from Davenport, Iowa to Lima, Ohio in order to establish the said partnership business in the State of Ohio.

In 1933, at or about the time that Sherman Abrahams moved to Lima, Ohio, the aforesaid Bernard Abrahams moved from Davenport, Iowa to New York City for the purpose of opening an office for the purchase of merchandise for the stores then owned by the said partnership of Abrahams Brothers.

Herbin Abrahams continued to live in Davenport, Iowa and to conduct the business of the said partnership in Iowa.

(d) Until about 1965, Herbin Abrahams was engaged in the supervision of the retail stores owned by the said partnership in the State of Iowa and in Southern Indiana; Sherman Abrahams was engaged in the supervision of the stores owned by the said partnership in the State of Ohio and in Eastern Indiana; and

said Bernard Abrahams conducted the buying of merchandise for the said stores from an office in New York City.

7. (a) By 1971 the said partnership had expanded from its initial membership of three partners to twelve partners as set forth in paragraph number "5" above and the said business had expanded into a chain of thirty stores located in six midwest states, namely Iowa, Ohio, Indiana, Illinois, Michigan and Kentucky, nine of which said stores were located in Ohio.

(b) Title to the thirty stores was vested in six separate corporations, one for each of said six states, all of the stores located in each of said states being owned by a separate corporation organized under the laws of the state in which the stores were located.

(c) All of the issued shares of stock of each of said six corporations was owned by the petitioner Abrahams Brothers during the period at issue and during the same period the officers of each of the said six corporations were the three general partners of Abrahams Brothers, namely the said Bernard Abrahams, Sherman Abrahams, Donald Abrahams, son of Sherman Abrahams and, in addition, Paul Trier, one of the limited partners of Abrahams Brothers and its comptroller.

8. The record shows that Herbin Abrahams is no longer living but does not indicate the date of his death. However, in 1965, Philip M. Adler III became a member of the partnership of Abrahams Brothers and from that time to and including the tax year 1975 he lived in Lebanon, Indiana and, on behalf of the said partnership, was responsible for the supervision of all the thirty stores aforesaid, except the stores located in Ohio which continued to be supervised by Sherman Abrahams.

9. (a) During the period at issue, namely the tax years 1971 through 1975, the office of the petitioner Abrahams Brothers located in New York City

was the principal office of the said partnership.

(b) The services performed during said period in the said office in New York City under the supervision of the aforesaid active partners of Abrahams Brothers, other than Sherman Abrahams and Philip M. Adler III, included the purchase of merchandise for all of the aforesaid thirty stores, the maintenance of perpetual inventory control for all of said stores and the performances of bookkeeping and billing services. The partnership maintained an account with each of said stores and charged each a fee for its services based on a percentage of their respective sales.

(c) During the period at issue, the following active partners who performed services in the New York City office of the partnership also performed services in the west for the said thirty stores as follows:

(i) Donald Abrahams spent approximately fifty percent of his time in the west, looking for new locations for stores and dealing with matters of personnel. On these visits he transacted partnership business with said Sherman Abrahams and Philip M. Adler III in their offices in Ohio and Indiana, hereafter mentioned.

(ii) John S. Schultz, who was in charge of the Computer and Systems Division of the partnership and responsible for setting up terminals in the said stores, spent about one third of his time in the said stores training personnel to handle that aspect of the operations of the partnership business.

(iii) Paul Trier, the Comptroller, who was in charge of the Accounts Receivable and Collections of the partnership had "to spend a certain part of his time in the stores to go through all of these accounts and make sure follow-up procedures are taken care of".

(iv) Herbert Levy, whose duties related exclusively to merchandising was in the said stores "approximately 25 to 30 percent of his time in merchandising activities".

10. (a) During the tax years at issue, namely 1971 through 1975, Sherman Abrahams was in charge of the said nine stores located in Ohio with respect to their supervision, the recruitment and training of personnel and merchandising, namely "making sure that the proper merchandise is in the stores" and "was also responsible for inventories taken in those stores".

(b) Each of said stores had a manager who was responsible for the day to day conduct of the business. Said Sherman Abrahams was the principal point of contact between the said store managers in Ohio and the partnership of Abrahams Brothers.

(c) As part of the responsibility of Sherman Abrahams and to enable him to carry the duties of supervision in subdivision (a) and (b) of this paragraph 10, Sherman Abrahams travelled around the State of Ohio.

(d) Said Sherman Abrahams, whose residence was in Lima, Ohio, during the said period at issue, had an office for the conduct of the partnership business in Ohio in a portion of the store operated by the partnership's Ohio corporation located in Lima, Ohio.

Said store was located in a one-floor building and said office was in the rear of said store, physically separated from its merchandising area and also from the office of the manager of said store. Said office had its separate telephone extension and a separate file cabinet.

11. (a) During the said period at issue, Philip M. Adler III resided in Lebanon, Indiana and had a private office in Lebanon for the conduct of the business of the partnership in all of the states where its stores were located in except Ohio.

(b) Said office was located on the second floor of a two-story building in which the Lebanon store operated by the said partnership's Indiana corporation was located. The sales area of the store was on the first floor of said building. The said office had a separate telephone and also contained files.

(c) The duties of said Philip M. Adler III involved the supervision of the stores operated by the corporations and owned by the partnership, except as stated, the Ohio stores, said duties of supervision including the maintenance of "a flow of merchandise to each store that is appropriate for that store as well as seeing that mark downs are taken at the proper time, that interior and exterior displays and advertising is handled properly" and he was also involved in personnel recruitment and training, supervision of periodic inventories and search for new locations.

12. Both Sherman Abrahams and Philip M. Adler III during the said period at issue were reimbursed by the said partnership for the expenses they incurred "in traveling and entertaining in pursuit of the business of Abrahams Brothers" based on the submission of vouchers showing itemized expenses.

13. (a) The said partnership owned a Piper Comanche airplane which during the tax years at issue, was kept in a hangar at Terry Airport between Lebanon and Indianapolis and for which the said partnership paid property taxes to the State of Indiana.

(b) The said partnership was not registered in and had not filed a registration certificate with either the State of Ohio or the State of Indiana during the periods at issue and did not file income tax returns with either the State of Ohio or the State of Indiana during said periods.

CONCLUSIONS OF LAW

A. That during the tax years 1971 through 1975, the petitioner Abrahams Brothers, a New York limited partnership, had regular places of business

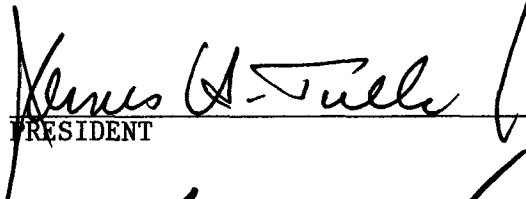
outside New York State, namely an office in Lima, Ohio and an office in Lebanon, Indiana, for the regular and continuous conduct of its business and pursuant to the applicable provisions of the Tax Law and of the Regulations, was entitled to allocate to sources outside New York State a fair and equitable portion of its unincorporated business gross income over its unincorporated business deductions for said tax years in accordance with the allocation formula used by the said partnership.

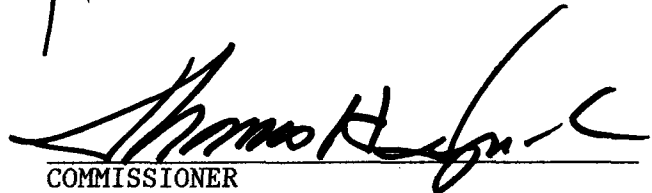
B. That the petition of Abrahams Brothers with respect to the tax years 1973, 1974 and 1975 is granted and the Notice of Deficiency issued April 14, 1977 is hereby cancelled.

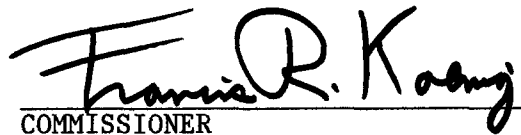
DATED: Albany, New York

DEC 12 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER