

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
New York Securities Co. :

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 Years 1967 & 1968. :

State of New York  
County of Albany

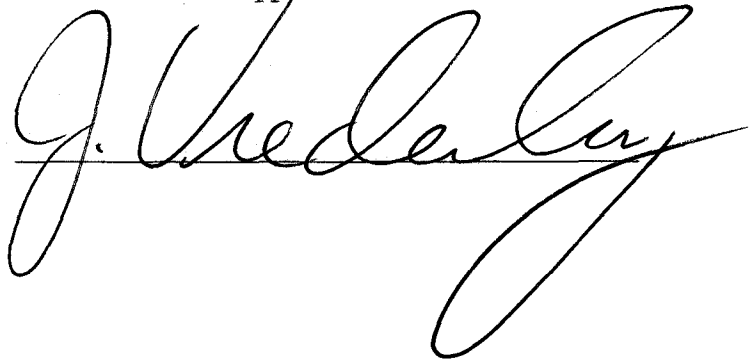
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 6th day of October, 1982, he served the within notice of Decision by certified mail upon New York Securities Co., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

New York Securities Co.  
c/o New York Securities, Inc.  
1290 Avenue of the Americas  
New York, NY 10019

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  
6th day of October, 1982.



AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174



STATE OF NEW YORK

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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 6th day of October, 1982, he served the within notice of Decision by certified mail upon J. Edward Shillingburg the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

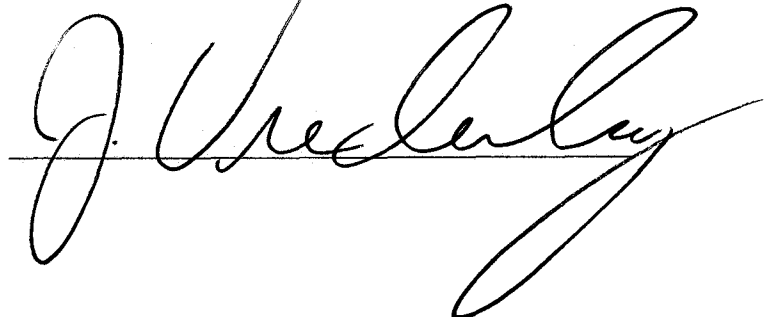
J. Edward Shillingburg  
Lord, Day & Lord  
25 Broadway  
New York, NY 10004

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 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 October, 1982.

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OATHS PURSUANT TO TAX LAW  
SECTION 174

A large, stylized handwritten signature, likely of the deponent Jay Vredenburg, written in dark ink over a horizontal line.



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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 Years 1967 & 1968. :

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 6th day of October, 1982, he served the within notice of Decision by certified mail upon Bradford & Elizabeth Mills, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

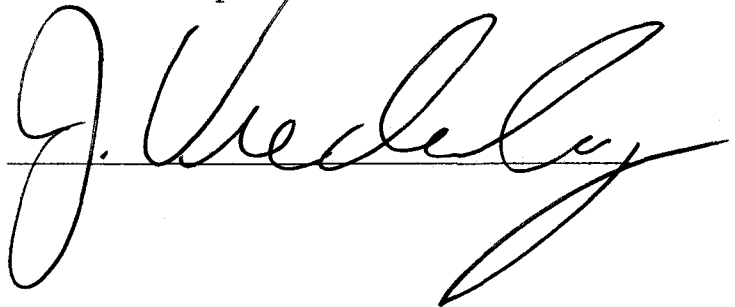
Bradford & Elizabeth Mills  
Pretty Brook Rd. RD#2  
Princeton, NJ 08540

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.

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6th day of October, 1982.

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OATHS PURSUANT TO TAX LAW  
SECTION 174





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

October 6, 1982

New York Securities Co.  
c/o New York Securities, Inc.  
1290 Avenue of the Americas  
New York, NY 10019

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  
Law Bureau - Litigation Unit  
Albany, New York 12227  
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
J. Edward Shillingburg  
Lord, Day & Lord  
25 Broadway  
New York, NY 10004  
and  
Bradford & Elizabeth Mills  
Pretty Brook Rd. RD#2  
Princeton, NJ 08540  
Taxing Bureau's Representative



STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
Bradford & Elizabeth Mills	:	AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision	:	
of a Determination or a Refund of Personal Income	:	
Tax under Article 22 of the Tax Law	:	
for the Years 1969 & 1970.	:	

State of New York  
County of Albany

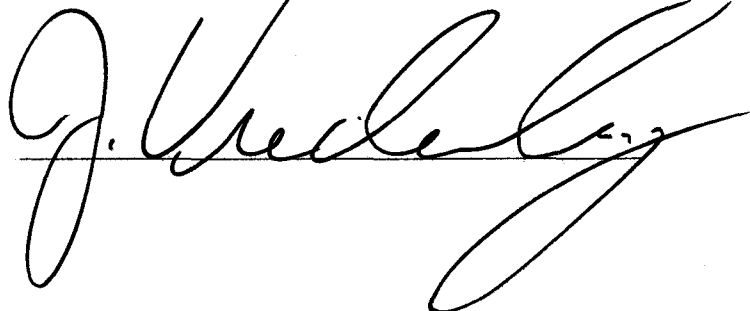
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 6th day of October, 1982, he served the within notice of Decision by certified mail upon Bradford & Elizabeth Mills, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Bradford & Elizabeth Mills  
Pretty Brook Rd., RD #2  
Princeton, NJ 08540

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  
6th day of October, 1982.



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STATE OF NEW YORK

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of :  
Bradford & Elizabeth Mills :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :  
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Tax under Article 22 of the Tax Law for the Years :  
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State of New York  
County of Albany

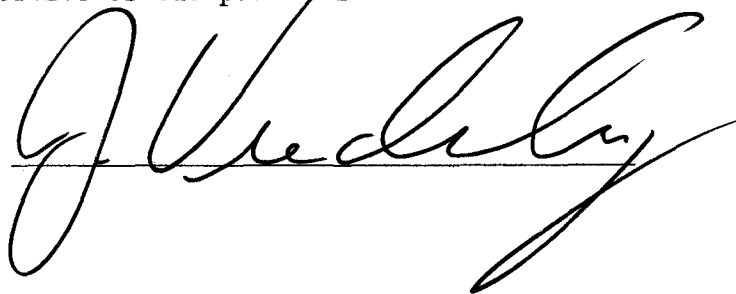
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J. Edward Shillingburg  
Lord, Day & Lord  
25 Broadway  
New York, NY 10004

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AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174



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

October 6, 1982

Bradford & Elizabeth Mills  
Pretty Brook Rd., RD #2  
Princeton, NJ 08540

Dear Mr. & Mrs. Bradford:

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) 690 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  
Law Bureau - Litigation Unit  
Albany, New York 12227  
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
J. Edward Shillingburg  
Lord, Day & Lord  
25 Broadway  
New York, NY 10004  
Taxing Bureau's Representative



STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition  
of  
NEW YORK SECURITIES CO.  
for Redetermination of a Deficiency or for  
Refund of Unincorporated Business Tax under  
Article 23 of the Tax Law for the Years 1967  
and 1968.

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DECISION

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In the Matter of the Petition  
of  
BRADFORD AND ELIZABETH MILLS  
for Redetermination of a Deficiency or for  
Refund of Personal Income Tax under Article 22  
of the Tax Law for the Years 1969 and 1970.

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Petitioner, New York Securities Co., c/o New York Securities Co., Inc.,  
1290 Avenue of the Americas, New York, New York 10019, filed a petition  
for redetermination of a deficiency or for refund of unincorporated business  
tax under Article 23 of the Tax Law for the years 1967 and 1968 (File No.  
01064).

Petitioners, Bradford and Elizabeth Mills, Pretty Brook Road, RD #2,  
Princeton, New Jersey 08540, filed a petition for redetermination of a deficiency  
or for refund of personal income tax under Article 22 of the Tax Law for the  
years 1969 and 1970 (File No. 01065).

A formal hearing was held before Arthur Bray, Hearing Officer, at the  
offices of the State Tax Commission, Two World Trade Center, New York, New  
York, on June 17, 1981 at 9:15 A.M. Petitioners appeared by Lord, Day & Lord



(J. Edward Shillingburg, Esq., of counsel). The Audit Division appeared by Ralph J. Vecchio, Esq. (William Fox, Esq., of counsel).

#### ISSUES

I. Whether the doctrine of laches estops the State Tax Commission from sustaining the notices of deficiency.

II. Whether the salaries received by partners of a partnership from a corporation owned by the partners constitutes income to the partnership which is subject to unincorporated business tax and, if so, whether the additional income was properly computed.

III. Whether the Audit Division improperly disallowed a salary allowance of \$5,000.00 for compensation paid to a limited partner.

IV. Whether petitioners Bradford and Elizabeth Mills may allocate certain income received by Bradford Mills to sources outside of New York State.

#### FINDINGS OF FACT

1. New York Securities Co., a limited partnership, filed New York State partnership returns for the years 1967 and 1968.

2. On March 29, 1971 the Audit Division issued a Notice of Deficiency accompanied by an explanatory Statement of Audit Changes which asserted a deficiency of unincorporated business tax for the years 1967 and 1968 for the partnership of New York Securities Co. (the "Partnership") on the ground that the salaries paid by New York Securities Co., Inc. to the partners constituted taxable business income. The deficiency was also premised upon the disallowance of \$5,000.00 for 1967 on the ground that the Partnership was not permitted a deduction for the services of an inactive partner. The total deficiency asserted for the years 1967 and 1968 was \$15,739.00, plus interest of \$2,256.58, for a total of \$17,995.58.



3. Bradford and Elizabeth Mills filed a New York State Income Tax Nonresident Return for the year 1969. The wage and tax statement for the year 1969 reveals that Bradford Mills received wages of \$25,000.00 from New York Securities Co., Inc. Bradford and Elizabeth Mills allocated their total wage income from all sources of \$62,083.39 on the basis of the number of days which Bradford Mills worked in and out of New York State in 1969.

4. Bradford and Elizabeth Mills filed a New York State Income Tax Nonresident Return for the year 1970. The wage and tax statement for the year 1970 reveals that Bradford Mills received wages of \$14,583.30 from New York Securities Co., Inc. and wages of \$25,000.00 from New York Securities Placement, Corp. Bradford and Elizabeth Mills allocated their total income in the New York State column on page 2 of \$55,016.00 on the basis of the number of days which Bradford Mills worked in and out of New York State in 1970.

5. On April 13, 1973 the Audit Division issued a Notice of Deficiency accompanied by an explanatory Statement of Audit Changes which asserted a deficiency of personal income tax due for the year 1969 from Bradford and Elizabeth Mills in the amount of \$3,494.92, plus interest of \$628.25 for a total of \$4,123.17. The deficiency was asserted on the ground that since the Partnership did not allocate partnership income, the salary received from the Partnership was fully taxable by New York State.

6. On March 25, 1974 the Audit Division issued a Notice of Deficiency accompanied by an explanatory Statement of Audit Changes which asserted a deficiency of personal income tax due for the year 1970 from Bradford and Elizabeth Mills in the amount of \$2,902.82, plus interest of \$512.75, for a total of \$3,415.57. The deficiency was asserted on the ground that the salaries received by member partners of the Partnership from New York Security Placement



Corporation and the New York Securities Co., Inc. constituted income to the Partnership and are wholly taxable to New York State. Adjustments were also made to reflect Mr. and Mrs. Mills' share of the gains and losses reported by the Partnership and wages shown on the withholding tax statements. Additionally, an adjustment was made to reflect a math error in determining total Federal income.

7. The Partnership was organized in 1962. Its offices were located at One Whitehall Street, New York, New York, until 1970. Early in 1970, the partnership moved its offices to One New York Plaza, New York, New York.

8. During the period from 1967 through a portion of 1970, the Partnership was engaged in three principal activities. The first activity engaged in was that of stockbrokerage. As members of the New York Stock Exchange, American Stock Exchange and Pacific Stock Exchange, the Partnership could trade stocks or bonds for its customers.

9. The second activity engaged in by the Partnership was that of providing services as a managing or principal underwriter. As a principal underwriter, the Partnership formed groups of investment banking firms to assist the Partnership in underwriting issues and selling them to the public. The principal underwriter would purchase securities in large blocks and then distribute them in small blocks to its customers and co-underwriters' customers. Concomitant with this activity, the Partnership made a market through its trading department in those securities that were not listed until such time that they might become listed.

10. The third activity engaged in by the Partnership consisted of participating in underwriting groups managed by other investment brokers.



11. In 1967, the Partnership had seven or eight general partners and two limited partners. The number of general partners increased to about fifteen by 1970. Item seventeen (17) of the Amended Partnership Agreement dated January 1, 1967 states that "[a] Limited Partner... shall take no part in the control or management of the business of the Partnership." The number of individuals associated with the Partnership increased during the period 1967 through the middle of 1970 from about 60 to about 75 or 80.

12. The New York Securities Co., Inc. (the "Corporation") was incorporated on March 11, 1964. The Corporation's activities involved: long-term financial planning for its clients, the private placement of long-term loans, the private placement of securities, and financial advice regarding corporate mergers, acquisitions and divestitures. The Corporation was also involved in the financing and construction of buildings for occupancy by others on a long-term basis.

13. The corporate form of organization was utilized for the foregoing activities in order to avoid potentially unlimited liability. During the period at issue, insurance was not available to cover the activities carried on by the Corporation. A second advantage of the corporate form of organization was that it made it easier to maintain certain capital requirements.

14. The activities of the Partnership could not be carried on as a corporation because it was the norm of the stock brokerage business that it be handled as a partnership. Further, the Partnership's clients and co-underwriters wanted the protection afforded by being able to look to a partner's personal assets.

15. The partners engaged in the stock exchange business had the additional protection of the stock exchange itself and certain rules and regulations. In



addition, there was a type of insurance available which related to the underwriting which the partnership engaged in.

16. During the period 1967 through the middle of 1970, the Corporation was not a member of a stock exchange and did not engage in any public offerings or brokerage services. The Corporation only provided services to its clients and not to the Partnership. The Corporation and the Partnership did not have the same clients.

17. During the period 1967 through the middle of 1970, the Partnership did not engage in any private placement, merger, acquisition or financial consulting work.

18. All of the stock of the Corporation was held by the members of the Partnership, in differing amounts, until 1969. From 1967 through the middle of 1970, members of the Partnership provided services to the Corporation in their capacity as officers of the Corporation.

19. The policy of the Partnership was established by the partners. The policy of the Corporation was established by the Board of Directors which, during the period in issue, was made up of stockholders.

20. The officers of the Corporation received compensation from the Corporation according to how the Board of Directors determined that the particular officer contributed to its business. The individuals who were partners did not receive the same amounts of compensation. The compensation paid to the Corporation's officers was not in proportion to their interests in the partnership profits. The Corporation had its own payroll records, filed its own payroll tax returns, and withheld taxes and social security.

21. The calculated deficiency of unincorporated business tax asserted to be due from the Partnership failed to include the corporate salary paid to one



partner in the amount of \$12,500.00 and erroneously set forth the corporate salary of another partner as \$32,000.00, rather than the \$3,200.00 actually paid.

22. The individual partners received from the Partnership: salaries; interest, based upon their contributions of capital to the Partnership; and a share of the profits. The salary paid to a partner did not include a share of the Corporation's income.

23. The employees of the Corporation and the Partnership were entirely separate except for the officers of the Corporation. However, during one of the years in issue, one officer of the Corporation was not a partner. On occasion, an officer of the Corporation would utilize the personnel of the Partnership.

24. The Partnership and the Corporation utilized the same offices. The books and records of both firms were kept in the same office. However, the Corporation and the Partnership maintained separate books and records. The Partnership was required to maintain its books and records meticulously for submission to regulatory agencies. The Partnership and the Corporation maintained separate bank accounts.

25. Income earned by the Partnership and by the Corporation was recorded on the books of the entity which received it. The Partnership income which was derived from brokerage fees, underwriting, participations, trading profits, interest and margin accounts, and similar items was recorded on the books of the Partnership. Income earned by the Corporation arising from fees earned through its activities in private placement, mergers, acquisition, financial consulting and real estate consulting was entered on the books of the Corporation.



26. The direct expenses of each entity were entered on the books of, and paid by, the entity which incurred the expense. Overhead expenses were allocated between the Corporation and the Partnership based on a ratio of the growth income generated by each of the entities. Rent was billed to and paid by the Partnership and then included in the general overhead allocation. Administrative salaries were also allocated as part of overhead. When the office of the Corporation utilized the personnel of the Partnership, the expense attributable thereto would also be allocated.

27. For 1966 and 1967, the Statement of Income and Expenses submitted by the Corporation showed a deduction for reimbursement of expenses to New York Securities Co. The Partnership's financial statements reported this income as a reduction in its expenses under the category "Less expenses reimbursable by affiliates". These expenses were billed to the Partnership who paid them with partnership funds. The Corporation subsequently reimbursed the Partnership for its share of expenses.

28. One of the limited partners to whom the Corporation paid a salary worked on a large brokerage account. This same limited partner conducted a seminar for the Partnership and the Partnership's associates on the events of gold, silver and money markets. In addition, this individual directed stock commission business to the Partnership.

29. On July 31, 1970, the Partnership terminated its activities. The business of the Partnership was continued by a new Delaware corporation by the name of New York Securities Co., Incorporated.

30. In 1970, the Corporation's name was changed to New York Securities Placement Corporation. The Corporation continued in the business of private placement, mergers, acquisitions, and financial consulting.



31. The Partnership reorganized in corporate form because it started losing money. The partners felt that the potential liability should be assumed in corporate form. Additionally, many of the larger stock brokerage firms began to incorporate in the late 1960's and early 1970's and this became more accepted by the public.

32. In 1969 and 1970, Bradford Mills was called upon to work outside of New York State on behalf of the Corporation. Mr. Mills worked on mergers and private placements while outside of New York State.

33. On August 5, 1970, the offices once utilized by the Partnership and now occupied by the Corporation were totally destroyed by a fire. This fire destroyed most of the Partnership's and Corporation's records.

#### CONCLUSIONS OF LAW

A. That the record does not establish that petitioners have been prejudiced by the asserted delay in conducting a hearing following the filing of the petitions. Moreover, "...the State cannot be estopped from collecting taxes lawfully imposed and remaining unpaid in the absence of statutory authority." (Matter of McMahan v. State Tax Comm., 45 A.D.2d 624, 627, mot. for lv. to app. den. 36 N.Y.2d 646. Accord, Matter of Walker & Co. v. State Tax Comm., 62 A.D.2d 77, 80). Accordingly, the argument to dismiss on the ground of laches is hereby denied.

B. That the salaries in issue were paid for services actually rendered for a type of service that was not part of the business which was regularly carried on by the partnership within the meaning of paragraph (b) of section 703 of the Tax Law. Accordingly, the salaries received by the individual partners from the Corporation are not attributable to the Partnership (see Matter of F. Eberstadt and Co., State Tax Commission, July 23, 1974).



C. That the limited partners were not active in the business of the partnership. Therefore, the allowance for services is allowed only for general partners within the meaning and intent of section 708 of the Tax Law.

D. That the amounts in issue received by Bradford and Elizabeth Mills were salaries from the Corporation and not distributions of partnership income. Therefore, Bradford and Elizabeth Mills are entitled to allocate this income according to the days worked in and out of New York State (Matter of John F. and Ellenor V. Van Deventer, State Tax Commission, July 23, 1974).

E. That petitioners' proposed Findings of Fact and Conclusions of Law are hereby rejected since they are either not set forth with sufficient particularity to permit response or are conclusory in nature.

F. That the petition of New York Securities Co. is granted to the extent shown in Conclusion of Law "B" supra and denied to the extent shown in Conclusion of Law "C" supra. The petition of Bradford Mills and Elizabeth Mills is granted for 1969 and the Notice of Deficiency issued for that year is cancelled; however, the Audit Division is directed to modify the Notice of Deficiency for 1970 only to the extent of allocating wage income on the basis of days worked within and without New York State.

DATED: Albany, New York

OCT 06 1982

STATE TAX COMMISSION

ACTING PRESIDENT

COMMISSIONER

COMMISSIONER