STAX RECORDS AND ISAAC HAYES

- Stax Records was a legendary recording studio in Memphis founded in 1957 by a country fiddler named Jim Stewart. With little success in the country music arena, Stewart turned to rhythm and blues. It's first major hit was Rufus and Carla Thomas's "Cause I Love You." The success of this recording led to its first national distribution deal with Atlantic Record.
- Stax was originally called Satellite Records but changed its name to Stax in 1962.
    - The name comes from the two founders, Jim Stewart and Estelle Axton.
    - Stax developed what came to be known as the "Memphis Sound," blending soul, R&B, gospel, and funk.
    - Stax was especially remarkable for featuring racially integrated talent.
    - Isaac Hayes was part of the second wave of talent at Stax, starting his career as a session musician at Stax in the 1970s.
- Stax was distributed by Atlantic Records from 1960 until May 1968 with great success. They operated on a handshake until 1965, when a written agreement was proposed. Unbeknownst to Jim Stewart, who didn't read the contract, a clause was inserted that provided that if Stax should ever sever the distribution agreement, Atlantic would have the right to all the Stax material it had distributed up to that point in perpetuity.
- Atlantic was sold to Warner Brothers in 1968, and Stax elected to sever the agreement. As a result, Jim Stewart lost control of all of his back catalog.
- Following the death of Otis Redding in 1967 and the dissolution of the distribution contract with Atlantic Records, Stewart into a new partnership with former disc jockey Alvertis Isbell a/k/a Al Bell.

Sale to Gulf and Western

- In June 1968, Stewart and Bell sold Stax to Gulf and Western, a conglomerate, which endeavored to distribute Stax product through its other record company, Dot Records. Unhappy with that arrangement, Stewart and Bell repurchased their company for $1 million more than they paid for it.

Renaissance of Stax

- As a result of the buy back from Gulf and Western, Stax operated as a truly independent company from July 1970 until October 1972. During this two-year period, Bell orchestrated a “Soul Explosion” at Sax, flooding the market with albums to revitalize the Stax name, and quadrupling its annual sales.

- Isaac Hayes, who started his career as a session musician at Stax, was the central figure in this period thanks to the breakout success of his album, “Hot Buttered Soul.”
- Hayes reached even greater success with the Oscar-winning “Theme from Shaft.”
- Despite these and other successes, Stax began to decline as the result of financial strain.

Trouble with CBS

- In October 1972, Stax entered into a distribution contract with CBS. Stewart was growing tired of the amount of office work the success of Stax entailed and wanted to sell his part of the company. An outright sale to CBS was rejected because of anti-trust concerns. Instead, CBS agreed to loan Al Bell $6.7 million, which Bell was to partially use to buy Stewart’s half of the company. CBS received exclusive distribution rights for Stax’s three main labels: Stax, Volt, and Enterprise.
- The deal with CBS was intended to provide an outlet for Stax products in the department stores that catered to white consumers. Prior to that, Stax had depended on distribution through “Mom and Pop” retail record stores located in black neighborhoods.
- CBS had become interested in moving into to black market. It had considered purchasing Motown or Stax outright, but instead decided to enter into the distribution agreement with Stax as a way of establishing a relationship that could eventually lead to an opportunity to purchase the company.
- Bell had been reluctant to enter into an agreement with such a “white monolith” as CBS. He relied principally upon CBS Record Division President, Clive Davis, for reassurances that Stax and the black music industry would be treated fairly. Unbeknownst to Bell, federal prosecutors in New Jersey were becoming interested in activities at CBS, including possible ties between the music industry and organized crime. In the course of this investigation, CBS uncovered irregularities in Davis’s expense account, including the allegation that he used company funds to pay for his son’s bar mitzvah. Davis was immediately terminated by CBS, which sued him to recover $94,000 in company funds he had allegedly used for personal reasons. In addition, he was indicted on six counts of tax evasion. He plead guilty to one count and paid a fine of $10,000, and settled the lawsuit with CBS.

- With the loss of Davis, who perhaps was the only one at CBS who understood the intended distribution deal with Stax, proved disastrous for Stax. Stax wanted access to CBS's rack jobbers, but had agreed to maintain responsibility for marketing and promotion. The new executives at CBS thought that Davis had made a bad deal that kept too little for CBS from record sales.
- In the summer of 1973 it was announced that the IRS was investigating Stax as the result of $130,000 in case discovered in the suitcase of Stax associate Johnny Baylor when he got off a flight from Memphis to Birmingham.
- By 1974 Bell was beginning to suspect that CBS was actively preventing Stax' product from getting into the hands of consumers. Bell and his brother, Paul Isbell, launched an investigation and found that although CBS was ordering substantial quantities of Stax product, it was allowing it to sit in warehouses. CBS countered that the reason the product was not in stores was that it was not in demand. CBS then returned truckloads of Stax product with the resold that Stax was over advanced.
- In April 1974, CBS began to withhold 74% of the money due to Stax on new releases as a reserve against records paid for but not sold. Stax no longer had adequate funds to operate. Al Bell turned to Union Planters Bank of Memphis, borrowing large sums to cover the shortfalls created by CBS. Stax used its publishing arm, East Memphis Music, as collateral for the loans because the record division was already encumbered by the loan from CBS dating back to 1972.

Isaac Hayes Sues Stax

- In September 1974, Isaac Hayes sued Stax for $5.3 million in unpaid royalties. Stax settled with Hayes, but lost him as their biggest artist.

CBS Sues STAX

- In October 1974, CBS sued Stax alleging that it had violated their distribution agreement by refusing to give CBS product after October 2.
- Stax filed a $67 million counter suit, claiming anti-trust violations. Stax claimed that CBS deliberately over ordered albums and left them unsold in its warehouses rather than placing them in stores alongside CBS's other projects. Stax also alleged that CBS deliberately withheld $2.32 million due to Stax under the distribution agreement. In essence, Stax alleged that CBS breached the distribution agreement in order to gain control over Stax.

Union Planters Sues CBS, Stax, Al Bell, and Jim Stewart

- In November 1974, Union Planters sued CBS, Stax, Al Bell, and Stax co-founder James F. Stewart for $10.5 million alleging that CBS had unlawfully taken control of Stax to the detriment of the bank, which by this time was owed $8.8 million by Stax.
- Stax had lost many of its key artists because of its inability to pay royalties. These included Isaac Hayes, the Dramatics, the Emotions, the Staple Singers, and comedian Richard Pryor, who filed his own suit against the company in November.

Al Bell Indicted

- While negotiations with CBS were ongoing, Stax troubles deepened. In September 1975, Stax's phone was disconnected. On September 8, 1975, a federal grand jury indicted Stax owner, Al Bell, and former Union Planters National Bank chairman, Joseph P. Harwell, on charges that they had conspired to obtain more than $18 million in fraudulent bank loans, credit extensions, and overdrafts. Harwell was already in prison at the time having previously been convicted of embezzling $284,000 from the bank.
- Bell was exonerated at trial, but Harwell was found guilty on two counts and was sentenced to five years in prison. He confessed judgment to Union Planters in the amount of $8,418,670.72.
- As a side note, Harwell filed a bankruptcy case in 1987 attempting to escape liability to Union Planters, and a very young bankruptcy attorney filed a complaint to determine the dischargeability of his $8.4 million debt. Harwell filed a motion to dismiss and for summary judgment on the theory that UP had allowed the judgment to lapse. Counsel responded by filing an amendment to the original complaint which alleged that the original judgment was timely recorded in Illinois, where Harwell was then living, and thus that there had been no lapse in the judgment. Judge David S. Kennedy ruled that Harwell's motion for summary judgment was not a responsive pleading, and thus that the bank could amend as of right.

Union Planters Initiates Foreclosure

- In November, Union Planters initiated foreclosure proceedings against East Memphis Publishing Company, Stax most profitable subsidiary, to collect a $3 million loan extended in 1973.
- On December 5, 1975, the assets of East Memphis Publishing Company were sold on the steps of the Shelby County Courthouse.
- The assets included some 3,500 copyrights.

- Union Planters was the only bidder.

Union Planters Files an Involuntary Bankruptcy Petition

- To collect the balance of its debt, Union Planters orchestrated an involuntary bankruptcy petition against Stax.
- The petitioning creditors were Mayer Meyers Paper Co. of Memphis; Star Photo Services, Inc., of Nashville; and Newark Electronics Corp. of Chicago.
- Bell and Stewart, through the company's attorney, David S. Kennedy, attempted to prove that Stax was actually solvent in order to avoid the entry of an order for relief, but on January 12, 1976, Bankruptcy Judge William Leffler ordered that the studio be closed and appointed former Criminal Court Judge Otis Higgs receiver. When Jim Stewart drove to work the next day, he found a padlock on the gate and armed guards protected the property of the bankruptcy estate.
- Stax asked to be permitted to file a Chapter XI financial reorganization but could not meet the July 15 deadline for posting the $500,000 indemnity bond required by Judge Leffler.
- Receiver Higgs asked to be relieved from duty only a few months into the case because of failure of the petitioning creditors (or the real movers behind the filing, Union Planters and CBS) to pay his expenses.
- On July 22, 1976, Judge Leffler entered the order finding Stax to be bankrupt. David Kennedy asked for reconsideration, alleging that Union Planters was attempting to bury Stax Records, but Judge Leffler ruled there was nothing to reconsider.

Financial Troubles of Isaac Hayes

- While Stax was deeply in debt to Isaac Hayes in 1974 as the result of unpaid royalties, Hayes was himself deeply in debt to Union Planters.
- On July 17, 1974, Hayes, along with Mike Storen, Avron Fogelman, and Kemmons Wilson, took over ownership of the American Basketball Association team the Memphis Tams.[21] The prior owner was Charles O. Finley, the owner of the Oakland A's baseball team. Hayes's group renamed the team the Memphis Sounds.
- Isaac Hayes sued Stax (Sept. 1974) for ≈ $5.3 million in unpaid royalties. The lawsuit was settled by a three-way agreement that freed Hayes from his Stax contracts but gave Union Planters the right to collect his royalties and apply them toward his debt.

Isaac Hayes Files Bankruptcy Petition

- By 1976, Isaac Hayes was in a similar financial state as Stax. Tax liens resulting from failure to pay 1974 income taxes were the main precipitating factor, but his largest creditor was Union Planters Bank, which was owed $1.76 million.
- Hayes had granted Union Planters security interests in a wide array of his assets—most notably music-related rights including all contract rights, accounts receivable, royalties (existing and future), production contract rights, equipment, copyrights, recording equipment, master tapes, and household furniture/appliances (valued ~$25,705). These were secured via three UCC 1 financing statements between 1974 and 1975.
- When all the schedules and statements were complete, Hayes and his wife listed 323 creditors

Settlement & Asset Assignment

- In a December 20, 1977 order, the court approved a settlement where the Bankruptcy Trustee assigned all of the property described in the UCC-1 filings to Union Planters Bank, enabling the bank to foreclose and retain those assets.
- At the auction to sell Hayes's possessions, Bennie Lazarov was the high bidder for his gold-plated Cadillac at $13,750.

Discharge

- Hayes received a discharge from bankruptcy on January 18, 1978. However, he never regained rights or royalty income from his compositions, as those had been transferred under the settlement.