

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

HOWARD E. DEMUTH and ELEANOR C. DEMUTH

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article (x) 22 of the :
Tax Law for the Year(s) ~~xxx~~Period(s) :
1961 and 1962.

State of New York
County of Albany

Catherine Steele, 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 1st day of October, 1976, she served the within Notice of Decision by (certified) mail upon Howard E. Demuth and Eleanor C. Demuth (~~representative of~~) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mr. & Mrs. Howard E. Demuth
22 Light Street
Baltimore, Maryland
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~~) ~~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
1st day of October, 1976

Catherine Steele

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

HOWARD E. DEMUTH and ELEANOR C. DEMUTH

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article (ss) 22 of the :
Tax Law for the Year(s) ~~1961 and 1962~~ :
1961 and 1962.

AFFIDAVIT OF MAILING

State of New York
County of Albany

Catherine Steele, 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 1st day of October, 1976, she served the within

Notice of Decision by (certified) mail upon Robert Franklin, Esq.
Howard O. Colgan, Jr., Esq.
Horace Newman, Esq.
(representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Howard O. Colgan, Jr., Robert Franklin & Horace Newman, Esqs.
Milbank, Tweed, Hadley & McCloy
1 Chase Manhattan Plaza
New York, New York 10005

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
1st day of October, 1976

Catherine Steele

Janet Bach



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N.Y. 12227

STATE TAX COMMISSION

ADDRESS YOUR REPLY TO

October 1, 1976

TELEPHONE: (518) **457-3850**

**Mr. & Mrs. Howard E. Demuth
22 Light Street
Baltimore, Maryland**

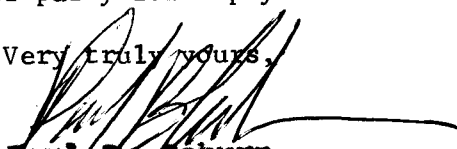
Dear Mr. & Mrs. Demuth:

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

Please take further notice that pursuant to
Section ~~(a)~~ **690** 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 E. 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 :
HOWARD E. DEMUTH and ELEANOR C. DEMUTH : DECISION
for Redetermination of a Deficiency or for :
Refund of Personal Income Tax under Article 22 :
of the Tax Law for the Years 1961 and 1962. :

Petitioners, Howard E. Demuth and Eleanor C. Demuth, residing at 22 Light Street, Baltimore 2, Maryland, filed a petition for redetermination of a deficiency issued under date of April 13, 1965, in personal income tax for the years 1961 and 1962 in the amount of \$663.58, plus interest of \$96.65, for a total of \$760.23.

A hearing was duly held on May 19, 1970, at the offices of the State Tax Commission, 80 Centre Street, New York City, before Lawrence Newman, Hearing Officer. Howard O. Colgan, Jr., Esq., Robert Franklin, Esq., and Horace Newman, Esq., all of Milbank, Tweed, Hadley and McCloy represented the petitioners. Edward H. Best, Esq., appearing by Solomon Sies, Esq., represented the Income Tax Bureau.

The record of said hearing has been duly examined and considered.

ISSUE

The issue in this case is the proper method of allocating primary or underwriting profits by petitioner, Howard E. Demuth's partnership, John C. Legg & Company, an underwriter and dealer in securities, when as part of a public offering the partnership as member of an underwriting syndicate managed by a New York based underwriter enters into an underwriting commitment for the purchase of securities of an issuing corporation, and the resulting effect

of such allocation on petitioners, Howard E. Demuth's and Eleanor C. Demuth's personal income tax liability.

FINDINGS OF FACT

1. Petitioner, Howard E. Demuth, filed New York State nonresident income tax returns for the years 1961 and 1962. Petitioner, Eleanor C. Demuth filed a joint New York State nonresident income tax return with, petitioner, Howard E. Demuth in 1962.

2. Petitioner, Eleanor C. Demuth, was not married to petitioner, Howard E. Demuth, in 1961; consequently she received no partnership income in said year.

3. On April 13, 1965, the Income Tax Bureau issued a Notice of Deficiency against petitioners, Howard E. Demuth and Eleanor C. Demuth for the years 1961 and 1962. Said Notice of Deficiency was based on petitioner, Howard E. Demuth's share, as a partner, of partnership income from primary or underwriting profits earned by John C. Legg & Company during the years in issue. Since the disposition of Howard E. Demuth's and Eleanor C. Demuth's petition is contingent on the State Tax Commission's determination in the Petition of John C. Legg & Company, the "Findings of Fact" in said decision are hereby adopted.

CONCLUSIONS OF LAW

A. That the "Conclusions of Law" stated in the State Tax Commission's decision in the Petition of John C. Legg & Company, a copy of which is attached hereto, are hereby adopted.

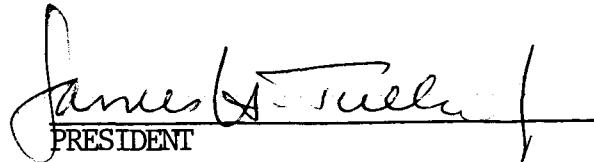
B. That petitioner, Howard E. Demuth, is liable for personal income tax due on his proportionate share of the partnership, John C. Legg & Company's primary or underwriting profits allocated to New York State for the years 1961 and 1962, in the State Tax Commission decision in the Petition of John C. Legg & Company.

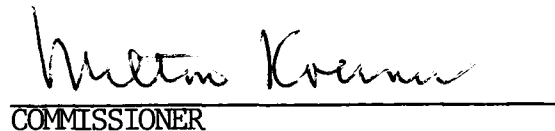
C. That petitioner, Eleanor C. Demuth, is liable for personal income tax due only for the year 1962. She was not married to petitioner, Howard E. Demuth, and received no income from his proportionate share of partnership underwriting profits in the year 1961.

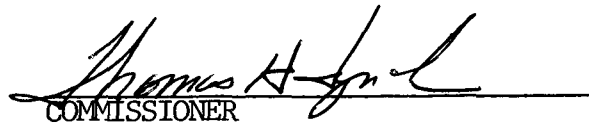
D. That the petition of Howard E. Demuth and Eleanor C. Demuth is granted to the extent that Eleanor C. Demuth is not liable for personal income tax in the year 1961; that the Income Tax Bureau is hereby directed to accordingly modify the Notice of Deficiency issued April 13, 1965; and, that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York
October 1, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER