

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

HOWARD A. PRIOR

AFFIDAVIT OF MAILING

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

State of New York
County of Albany

Bruce Batchelor, 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 8th day of December, 1976, ~~she~~ served the within
Notice of Decision by (certified) mail upon Howard A. Prior

~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed

as follows: Mr. Howard A. Prior
RFD #2
Frederick, 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)~~
~~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

8th day of December, 1976.

Bruce Batchelor

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

HOWARD A. PRIOR

AFFIDAVIT OF MAILING

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

State of New York
County of Albany

Bruce Batchelor, 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 8th day of December, 1976, he served the within
Notice of Decision by (certified) mail upon Howard Colgan, Esq.
Andrew Connick, Esq.
Robert Franklin, 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 Colgan, Andrew Connick & Robert Franklin, 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

8th day of December, 1976

Bruce Batchelor

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

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

ADDRESS YOUR REPLY TO

December 8, 1976

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

Mr. Howard A. Prior
RFD #2
Frederick, Maryland

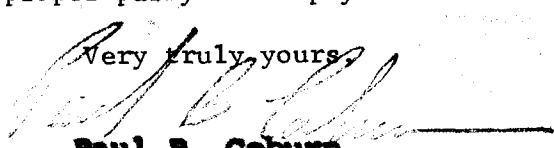
Dear Mr. Prior:

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

Please take further notice that pursuant to
Section(~~2~~) **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 B. 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 A. PRIOR

DECISION

for Redetermination of a Deficiency or
for Refund of Personal Income Tax under
Article 22 of the Tax Law for the Year
1961.

Petitioner, Howard A. Prior, residing at R.F.D. 2, Frederick, Maryland, filed a petition for redetermination of a deficiency issued under date of January 18, 1965, for personal income tax under Article 22 of the Tax Law for the year 1961 in the amount of \$62.00 plus penalties and interest of \$25.76 for a total of \$87.76.

A hearing was duly held at the offices of the State Tax Commission, 80 Centre Street, New York, New York, on May 19, 1970, before Lawrence Newman, Hearing Officer. Petitioner was represented by Howard Colgan, Esq., Andrew Connick, Esq. and Robert Franklin, Esq., all of Milbank, Tweed, Hadley & McCloy. The Income Tax Bureau was represented by Edward H. Best, Esq., appearing by Solomon Sies, Esq. 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's partnership, 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 petitioner's personal income tax liability.

FINDINGS OF FACT

1. Petitioner, Howard A. Prior, did not file a New York State nonresident income tax return for the year 1961. Petitioner's share of the partnership income allocated to New York State on the partnership form IT-204, as filed, was insufficient to require the filing of a New York State nonresident income tax return.

2. On January 18, 1965, the Income Tax Bureau issued a Notice of Deficiency against petitioner, Howard A. Prior, for the year 1961. Said Notice of Deficiency was based on petitioner's share, as a partner, of partnership income from primary or underwriting profits earned by Robert Garrett and Sons during the year in issue. Since the disposition of Howard A. Prior's petition is contingent on the State Tax Commission's determination in the Petition of Robert Garrett & Sons, the "Findings of Fact" in said decision are hereby adopted.

CONCLUSIONS OF LAW

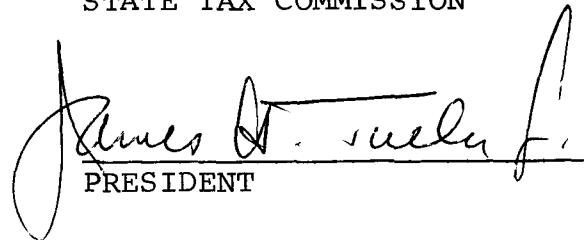
A. That "Conclusions of Law" stated in the State Tax Commission's decision in the Petition of Robert Garrett & Sons, a copy of which is attached hereto, are hereby adopted.

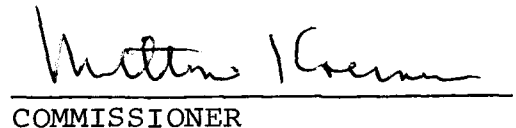
B. That petitioner, Howard A. Prior, is liable for personal income tax due on his proportionate share of the partnership, Robert Garrett & Sons' primary or underwriting profits allocated to New York State for the year 1961, in the State Tax Commission decision in the Petition of Robert Garrett & Sons.

C. That the deficiency is hereby affirmed and the petition accordingly denied.

DATED: Albany, New York
December 8, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER