

STATE OF NEW YORK
STATE TAX COMMISSION

*Cutter, Geo.
Frank S.
025
1971*

In the Matter of the Petition

of

George H. Cutter, Jr. & Frank S. :
Bennett d/b/u the firm name and :
style of Cutter, Bennett & Co. :
For a Redetermination of a Deficiency or :
a Refund of Unincorporated Business :
Taxes under Article(s) 23 of the :
Tax Law for the (Year(s) f/y/e October 31, :
1962

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

State of New York
County of Albany

Martha Funaro , 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 14th day of April , 1971, she served the within
Notice of Decision (or Determination) by (certified) mail upon George H. Cutter, Jr.
& Frank S. Bennett d/b/u
Cutter, Bennett & Co. (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
George H. Cutter, Jr. & Frank S. Bennett
wrapper addressed as follows: c/o Cutter, Bennett & Company
70 Pine Street
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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative
of) 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

14th day of April , 1971.

Linda Wilson

Martha Funaro

*address taken from current
Manhattan phone book: Cutter,
Bennett Securities Corp*

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
George H. Cutter, Jr. & Frank S. :
Bennett, d/b/u the firm name and
style of Cutter, Bennett & Co. :
For a Redetermination of a Deficiency or
a Refund of Unincorporated Business
Taxes under Article(s) 23 of the
Tax Law for the (Year(s) f/y/e Oct. 31, 1962

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

State of New York
County of Albany

Martha Funaro , 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 14th day of April , 19 71, she served the within
Notice of Decision (or Determination) by (certified) mail upon Thomas E.

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

Thomas E. White
25 Broad Street, Rm. 1410
New York, New York 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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative
of) 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

14th day of April , 1971.

Linda Wilson

Martha Funaro

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

GEORGE H. CUTTER, JR. & FRANK S.
BENNETT, individually and as co-
partners, d/b/u the firm name and
style of

CUTTER, BENNETT & CO.

for a redetermination of a deficiency
or for refund of Unincorporated Busi-
ness Taxes under Article 23 of the Tax
Law for the fiscal year ending October
31, 1962.

DECISION

The taxpayers petitioned for a redetermination of a deficiency or for refund of Unincorporated Business Taxes under Article 23 of the Tax Law for the fiscal year ending October 31, 1962. A formal hearing was held in the offices of the State Tax Commission in the City of New York on October 10, 1966. The taxpayers were represented by Meyer, Kissel, Matz & Seward, Esqs. (Thomas E. White, Esq. of Counsel).

FINDINGS OF FACT

1. The issue in this case is whether gains realized from the sale of certain securities are to be considered as income from the liquidation of the taxpayer-partnership, thereby being subject to unincorporated business tax.

2. The taxpayers were sole members of Cutter, Bennett & Co., a partnership engaged in the business of trading and dealing in tax exempt securities.

3. On October 6, 1961 the taxpayers decided to incorporate the partnership by October 20, 1961, with the assets of the partnership to be transferred to the new corporation as of the close of

business on October 31, 1961. A "Memorandum to the Files" dated October 9, 1961 states:

"The partnership will wind up its affairs by the end of 1961 and will file a Federal income tax return for the short period beginning November 1, 1961 and ending in December. This return will show a loss."

4. The partnership, during the months November and December, 1961 and January, 1962, purchased Indiana Toll Road Bonds. On January 31, 1962 the bond trading business of the partnership, along with cash, securities, office equipment and accrued income items totaling \$6,227,242.19 were transferred to the new corporation, Cutter, Bennett & Co., Inc. The partnership retained, in addition to the above mentioned bonds, assets of cash in the amount of \$12,694.00 and a receivable for \$38,118.00.

5. The partnership, during the months June, July and August, 1962, sold the Indiana Toll Road Bonds, realizing an aggregate long-term capital gain of \$131,096.61.

6. On October 31, 1962 the partnership was terminated and all assets were paid to the individual taxpayers.

7. On March 1, 1965 a notice of deficiency, File #1031 was issued in the amount of \$5,243.86. This deficiency was based upon a determination that the gain realized from the sale of the Indiana Toll Road Bonds constituted income from the liquidation of the partnership and was subject to unincorporated business tax.

DECISION

A. The gain realized by the partnership from the sale of the Indiana Toll Road Bonds constitutes income from the liquidation of the partnership and is subject to unincorporated business tax.

B. The petition is therefore denied and the notice of deficiency sustained, together with such interest as may be lawfully due.

DATED: Albany, New York
April 14 1974

STATE TAX COMMISSION

COMMISSIONER

COMMISSIONER

COMMISSIONER