

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

PIPER, JAFFRAY AND HOPWOOD

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) 1960, 1961 and 1962

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

*See Cranston
Personal Income
for 11 people
related to
Piper Jaffray
etc.*

State of New York
County of Albany

Rae Zimmerman, 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, 1971, she served the within
Notice of Decision (or Determination) by (certified) mail upon Piper, Jaffray
and Hopwood

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Piper, Jaffray & Hopwood
115 South 7th Street
Minneapolis, Minn.

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

8th day of December, 1971.

Martha F. Farnsworth

Rae Zimmerman

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

PIPER, JAFFRAY AND HOPWOOD:

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) 1960, 1961 and 1962

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

State of New York
County of Albany

Rae Zimmerman, 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, 1971, she served the within Notice of Decision (or Determination) by (certified) mail upon Paul G. Zerby, Esq.

(representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Paul G. Zerby, Esq.
Dorsey, Marquart, Windhorst, West & Halladay
2400 First National Bank Building
Minneapolis, Minn. 55402
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

8th day of December, 1971

Martha Tanaro

Rae Zimmerman

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

PIPER, JAFFRAY AND HOPWOOD

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

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) 1960, 1961 and 1962

State of New York
County of Albany

Rae Zimmerman, 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, 1971, she served the within
Notice of Decision (or Determination) by (certified) mail upon James F. Pitt, C.P.A.

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

wrapper addressed as follows: James F. Pitt, C.P.A.
Touche, Ross & Company
780 Northstar Center

and by depositing same enclosed in a postpaid properly addressed wrapper in a
Minneapolis, Minn. 55402
(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

8th day of December, 1971.

Harold F. Farnas

Rae Zimmerman

STATE TAX COMMISSION

In the Matter of the Petition :
of :
PIPER, JAFFRAY AND HOPWOOD : DECISION
for a Redetermination of a Deficiency or :
for Refund of Unincorporated Business :
Taxes under Article 23 of the Tax Law :
for the Years 1960, 1961 and 1962 :

The State Tax Commission hereby

3. Petitioner is a Minnesota partnership with its principal offices in Minneapolis. It is engaged in the stock brokerage business and is a member of the New York Stock Exchange and other security and commodity exchanges. In the years in question it had six offices

all located in the midwest. All of the petitioner's customers are located in the midwest.

4. In order to serve its customers petitioner maintained a correspondent relationship with the New York brokerage firm of Carl M. Loeb, Rhoades & Co. This relationship entailed that Loeb, Rhoades handled for petitioner the execution of orders on the floor of the New York Stock Exchange and handled all duties relating to stock transfers, "cashiering", handling of funds and other operations necessary in the brokerage business.

5. For its services as correspondent it was agreed that Loeb, Rhoades would receive one-third of the gross commission on each order executed. Petitioner would retain two-thirds of such commission.

6. Petitioner maintained a partner Mr. R.C.V. Mann as a floor trader on the floor of the New York Stock Exchange. The orders executed by Mr. Mann, however, were not referred to him directly by petitioner. Rather Mr. Mann executed orders referred to him by Loeb, Rhoades. It would be only accidental and infrequent if Mr. Mann executed an order which had originated with petitioner.

7. For Mr. Mann's services as floor broker, Loeb, Rhoades paid petitioner the standard commission paid to independent floor brokers on the New York Stock Exchange. Petitioner paid Mr. Mann, as a partner, a flat salary plus 2% of its total national profits. Mr. Mann's compensation was not directly determined by the floor trades he executed. The commissions paid to petitioner for Mr. Mann's services were about three times the compensation received by Mr. Mann from petitioner.

8. Mr. Mann received referrals from firms other than Loeb, Rhoades and petitioner received the fees for such referrals. These

fees amounted to about 15 to 20% of the fees received from Loeb, Rhoades for Mr. Mann's services and were always less than the compensation paid to Mr. Mann.

9. By agreement between petitioner and Loeb, Rhoades the amount of floor brokerage referred by Loeb, Rhoades to Mr. Mann was contingent on the amount of business the petitioner referred to Loeb, Rhoades. Enough floor brokerage was referred to Mr. Mann so that petitioner would earn in fees from Loeb, Rhoades an amount equivalent to eight and one-third percent of the brokerage business which petitioner referred to Loeb, Rhoades. This arrangement was designed to increase petitioner's share of brokerage commissions from 66 2/3% to 75%. The arrangement between petitioner and Loeb, Rhoades was entirely routine and legitimate.

10. Mr. Mann used an office and a secretary made available by Loeb, Rhoades. Occasionally he would hire a public stenographer.

11. The taxpayer filed timely New York partnership and unincorporated business tax returns (IT-204) for 1960, 1961, and 1962 and on such returns allocated income by formula. The exact figures are not in dispute and for purposes of illustration only, can be approximated. The formula for each year showed approximately: for property -- zero percent; for sales -- about 4% (being all of the orders executed by Mr. Mann); and for wages -- about one-tenth of one percent (the compensation of Mr. Mann as a partner being excluded). The computed business allocation percentage for each year was approximately one and three-tenths percent.

12. Petitioner's books and records are kept in Minneapolis. They have never been inspected by the Tax Commission or produced for its inspection. On such books, no attempt is made to segregate any

amounts attributable to New York. Such amounts are identifiable for revenues but generally not for expenses. There are overhead costs or shared costs of administration and professional services which would necessarily have to be allocated by a formula. Some direct expenses can be attributed to New York, but not by reference to standard summary accounts and only by identification from primary accounting records. No cost is assigned to the value of the office facilities supplied to Mr. Mann by Loeb, Rhoades.

13. The expense of getting customers in the midwest and of servicing their accounts is not segregated according to whether the orders will be executed in New York rather than in securities markets outside of New York.

14. The assessment is based upon the fees earned by Mr. Mann on the stock exchange as reduced by certain direct expenses and as further reduced by an allowance of \$5,000.00 for partner's services (Mr. Mann) and a \$5,000.00 exemption. The direct expenses were for stock exchange dues, office supplies, promotion, salaries, New York City Financial Tax, stock exchange, lunch club, piping club and miscellaneous. The amounts of these expenses were furnished to the Department by petitioner under the impression that the law required it to do so.

CONCLUSIONS OF LAW

The petitioner must allocate its income by direct accounting from its books under section 707(b) of the Tax Law and not by formula allocation under section 707(c).

A. Direct accounting may be mandated by the Commission. This is supported by the administrative experience and interpretation under section 707 and its predecessors, section 386-g of Article 16-A of the Tax Law and regulation 263.7 under Article 16 of the Tax Law. It is also supported by section 604(b) of the Tax Law and by implication

from section 707(a). This is the interpretation also of similar statutes formerly in effect in Kansas and Wisconsin. (see Webb Resources, Inc. v. McCoy, 194 Kans. 758, and Ebaloy, Inc. v. Wisconsin Dept. of Taxation, Wisconsin Board of Tax Appeals, C.C.H. Wisconsin State Tax Reporter ¶200-705).

B. Whether or not petitioner is a "unitary" business is of no significance under the language of Article 23 (see Utah Construction and Mining Co. v. Oregon State Tax Commission, Oregon Tax Court, Feb. 14, 1969; C.C.H. Oregon State Tax Reporter ¶202,092; 465 P. 2d 712 at 713; Western Contracting Corp. v. Utah State Tax Comm. 414 P. 2d 579 at 583 and 585). Even if, in this case, the petitioner's business was unitary in the sense that the orders referred by petitioner to its correspondent could be considered to be the same as the orders referred by the correspondent to the floor broker, then direct accounting would still be mandated since the services of such broker were valued and recorded at the fee schedule of the New York Stock Exchange. That fee schedule may be taken as an objective evaluation of the value of the New York floor broker's services out of state. The existence of an objective market price for intra-company transfers has been held to be sufficient in upholding the adequacy of direct accounting (Magnolia Petroleum Corp. v. Oklahoma Tax Commission, 190 Okla. 145). In such a case, it is clear that the taxpayer's business can be operated in separate parts.

C. The methods used by petitioner in keeping its books are approved despite the fact that the petitioner did not record deductions on books kept in New York in view of the fact that the burden of proof of deductions is in any case on the petitioner (Helvering V. Taylor, 293, U.S. 507). Supplemental records may be considered as part of

such "books" and have been so considered in the allowance of direct expenses (see Webb Resources, Inc. v. McCoy 194 Kans. 758 at 802). A portion of general overhead expenses would have been allowed if entered and allocated to New York on such books. The expenses of producing orders at the midwest offices of petitioner cannot be allowed as New York deductions. Even though such expenses may indirectly increase the volume of orders executed by the New York floor broker, and his profits, the importance of such expenses must be deemed to have been already taken into account in the fixing of the floor broker's commission rates. Any objective market price for services or goods would presumably take such factors into consideration (see Kansas City Star Co. v. Wisconsin Department of Taxation 8 Wisc. 2d 441).

DECISION

The deficiencies are found correct and are affirmed together with such interest, if any, as may be due under section 684 of the Tax Law.

DATED: Albany, New York
December 8, 1971

STATE TAX COMMISSION

Norman Gellman

COMMISSIONER

Bruce Manley

COMMISSIONER

Milton Koenig

COMMISSIONER

PIPER, JAFFRAY & HOPWOOD

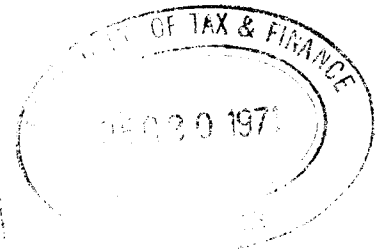
INCORPORATED

ESTABLISHED 1895 • MEMBER NEW YORK STOCK EXCHANGE, INC.

115 SOUTH SEVENTH STREET • MINNEAPOLIS, MINNESOTA 55402

612/371-6111

Personal file.



December 14, 1971

State of New York
Department of Taxation and Finance
Building 9, Room 214A
State Campus
Albany, New York 12226

Gentlemen:

This is to advise you that the address you are using for me no longer applies. Any further communications addressed to me relative to this matter should come to me here in care of Piper, Jaffray & Hopwood, 115 South Seventh Street, Minneapolis, Minnesota - 55402, or to my residence, 3822 West Calhoun Boulevard, Minneapolis, Minnesota - 55410.

Please eliminate from your records the address used in the enclosed copy of your letter.

Very truly yours,

W.S. Macfadden
William S. Macfadden

WSM:jah

Enclosure



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A

STATE CAMPUS

ALBANY, N. Y. 12226

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

STATE TAX COMMISSION

NORMAN F. GALLMAN, ACTING PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

ADDRESS YOUR REPLY TO

Albany, New York

December 8, 1971

William S. MacFadden
2007 West Franklin Avenue
Minneapolis, Minnesota

Dear Mr. MacFadden:

Please take notice of the DECISIONS of
the State Tax Commission enclosed herewith.

Please take further notice that pursuant to section 690
the Tax Law any proceeding in court to review an adverse decision
must be commenced within four months after
the date of this notice.

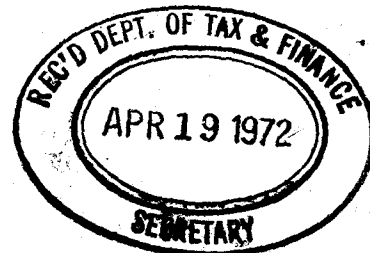
Any inquiries concerning the computation of tax due or refund allowed
in accordance with this decision or concerning any other matter relat-
ing hereto may be addressed to the undersigned. These will be referred
to the proper party for reply.

Very truly yours,

Nigel G. Wright
HEARING OFFICER

cc Petitioner's Representative
Law Bureau

Enc: 2 Decisions - William S. MacFadden, et al
Piper, Jaffray and Hopwood



April 18, 1972

The Honorable Louis J. Lefkowitz
Attorney General
State Capitol
Albany, New York 12224

Re: Piper, Jaffray & Hopwood et al vs.
State Tax Commission

Dear Mr. Lefkowitz:

Enclosed herein please find the entire file in the above matter which is sent to you in accordance with our letter of April 14, 1972 at which time Notice of Petition, Petition, Affidavit and Bond for Costs were forwarded to you.

Sincerely yours,

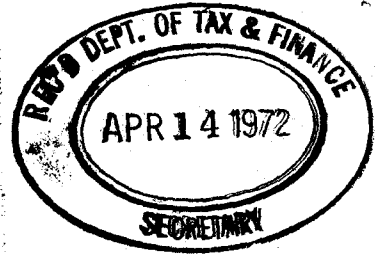
SAUL NECKELMAN
Director

JS:lk
Enc.

12/8/71

#23

April 13, 1972



The Honorable Louis J. Lefkowitz
Attorney General
State Capitol
Albany, New York 12224

Re: Piper, Jaffray & Hopwood, et al vs.
State Tax Commission

Dear Mr. Lefkowitz:

Enclosed herein please find Notice of Petition, Petition and Affidavit of the taxpayer scheduling the matter at a Special Term, Part I of the Supreme Court of the County of Albany for May 9, 1972. While a Bond for Costs is also enclosed, it should be noted that a Justice of the Supreme Court has not approved same as is required by Sec. 1138(a) of the Tax Law.

The entire file in the above matter will be forwarded under separate cover as expeditiously as possible.

Sincerely yours,

SAUL NICKELMAN
Director

JS:lk
Encs.