

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ROBERT GARRETT & SONS

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Unincorporated Business :
Taxes under Article (x) 23 of the :
Tax Law for the Year(s) ~~or Period(s)~~ :
1960 and 1961.

AFFIDAVIT OF MAILING

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 Robert Garrett & Sons

~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Robert Garrett & Sons
Garrett Building
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 the)~~
~~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

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ROBERT GARRETT & SONS

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a Revision of a Determination or a Refund :
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Taxes under Article (x) 23 of the :
Tax Law for the Year(s) ~~xx-xxxxxx~~ :
1960 and 1961.

State of New York
County of Albany

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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**

**Robert Garrett & Sons
Garrett Building
Baltimore, Maryland**

Gentlemen:

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

Please take further notice that pursuant to
Section(**722**) 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:

In the Matter of the Petition :
of :
ROBERT GARRETT & SONS :
for a Redetermination of a Deficiency :
or for Refund of Unincorporated Business :
Taxes under Article 23 of the Tax Law :
for the Years 1960 and 1961. :

DECISION

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.

The issue in this case is the proper method of allocating primary or underwriting profits by petitioner, an underwriter and dealer in securities, when as part of a public offering petitioner, 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. The Income Tax Bureau

asserts that such primary and underwriting profit is allocable to New York State in those instances where the underwriting activity occurred in this State and is to be distinguished from the secondary profit which is measured by the amount of profit made by an independent dealer on shares sold to the public and which are allocated to the branch office from which the shares were sold. The petitioner disagrees and asserts that it has properly apportioned the primary or underwriting profits to its principal and branch offices where the shares were sold.

FINDINGS OF FACT

1. Petitioner is engaged in business as a broker and dealer of securities and in investment banking. Petitioner also trades for its own account. Petitioner has seats in the New York, American and Philadelphia-Baltimore Stock Exchanges. Petitioner's principal place of business is at Baltimore, Maryland, where the firm's principal books and records are located.

2. Petitioner has a branch office in New York City. At its New York office, petitioner had one general partner, a Mr. Boveroux, two or three registered representatives, one "back-office" person, a Mr. George List, a secretary and a telephone operator. The function of the partner and the registered representatives was to produce business. The "back-office" man received and delivered securities.

3. During the years in issue, the petitioner was a member of underwriting syndicates. Some of the syndicates in which the petitioner taxpayer participated were those where the managing

underwriter was located within the State of New York. In such cases the final underwriting agreements were signed at the location of the managing underwriter. Delivery of any securities by the managing underwriter to the firm would take place at the managing underwriter's principal office.

4. The underwriting agreements were entered into for the purpose of facilitating the sale to the public of securities issued by an issuing corporation and was subject to the regulations of the Securities and Exchange Commission. The difference in price between that at which the shares are issued and purchased from the issuing corporations and the price at which they are to be offered to the public is called the spread. Of the spread, a certain portion is received by the managing underwriter or underwriters as their underwriting fee. Another portion is retained by the underwriter as his underwriting or primary profits as compensation for being part of the underwriting syndicate. The balance of the spread, that is the secondary profits, are retained by the distributors and sellers of the stock to the public, whether they are distributed to the public by the underwriters through their various offices, or by members of a selling group of which the underwriter may or may not be a part. The underwriting agreement provides for a commitment by each underwriter to purchase a certain amount of the issued securities. The underwriting agreements, entered into by the taxpayer provided that a certain portion of the securities to which the underwriting member has committed himself would be sold to selected dealers who are members of a selling group but who are not parties to the underwriting

agreement and would be entitled only to the secondary profits. The advantage of being an underwriter rather than merely a member of the selling group lies in the fact that the underwriter by distributing and selling directly to the public will be able to receive not only the secondary profits which are made by a dealer but the underwriting or primary profits as well.

5. The sale to the public of all securities handled by petitioner, in any capacity, took place at each of the firm's offices with all billing and confirmations being sent out from the Baltimore office.

6. Petitioner engaged in 84 separate underwriting syndications in 1960 and had primary profits therefrom (net of some losses) of \$83,424.70. Of these syndicates, 62 had managing underwriters whose principal place of business was in New York and which accounted for primary profits of \$56,561.89. In 1961, petitioner engaged in 155 separate syndications with primary profits (net of some losses) of \$223,429.26. These syndicates had New York based managers in 118 cases accounting for primary profits of \$125,044.75. All syndicates considered herein had been closed on petitioner's books during the years in question.

7. Petitioner's returns showed national gross and net income for 1960 as \$618,041.23 and \$197,985.41, and for 1961 as \$1,373,616.97 and \$641,709.29 which were attributed in their entirety to the Baltimore office and none to New York. The remainder of the gross receipts denominated as from "business" was allocated by type of income which resulted in New York business income and gross income of \$49,392.63 for 1960 and \$88,798.63 for 1961. The types of income

reflected in this were commissions from the various exchanges and the over-the-counter market, profits from principal transactions, fees from custody and collection and profits from syndicates and joint accounts closed during the year. Expenses were allocated separately. New York net income was thereby calculated to be a loss of \$3,684.92 in 1960 and a profit of \$20,182.99 in 1961.

8. Petitioner's underwriting business was reflected in its accounts and its tax return as follows: The total profit from an underwriting syndicate was divided into a primary profit from underwriting and a secondary profit from the sale to the public of the underwritten securities.

The amount of the secondary profit was allocated by the location of the office where the sale took place. The amount of the primary profit was apportioned by a ratio. Said primary profit included profits from syndicates managed in New York and those managed outside of New York. The ratio consisted of a fraction the numerator of which was an amount which included New York income from secondary profits and commissions and the denominator of which was an amount which included nationwide income from secondary profits and commissions.

9. The deficiency notice increased New York underwriting gross income from \$6,982.65 in 1960 to \$56,561.89, an increase of \$49,579.00 and from \$15,595.36 in 1961 to \$125,044.75, an increase of \$109,449.39. This was done to reflect the primary profits from New York managed underwriters. The deficiency notice also increased the amount of allowable deductions for expenses. This was done to reflect the costs attributable to the petitioner's underwriting activities which were incurred in Baltimore and thus were not reflected as New York

expenses on petitioner's books or tax returns. Such expenses were thus increased from \$53,077.55 to \$67,267.74 in 1960, an increase of \$14,190.19 and from \$68,615.64 to \$105,628.92 in 1961, an increase of \$37,013.28. This increase was computed by multiplying the total expenses of the firm by the ratio of New York gross income (as recomputed for syndication profits) over the nationwide gross income of the firm. These ratios were about 16% in 1960 and 14.4% in 1961. The result of this computation was allowed in lieu of the amounts deducted on the return. The increase in expenses allowed equaled about 25% of the primary profits as finally determined for 1960 and about 30% for 1961. Petitioner has not come forward with evidence of any more exact expense figures. The deficiency notice also recomputed the allowance for partners' services allowed by the statute. The final result is an increase in taxable income by \$30,389.05 for 1960 and \$71,472.71 for 1961.

CONCLUSIONS OF LAW

(A) Although the total profits made from the underwriting distribution and sale of securities include both underwriting profits and secondary profits, the underwriting profits are separate and distinct from the secondary profits.

(B) Each of the profits is required to be allocated to the source of such profits.

(C) The source of the primary and underwriting profits was the principal office of the managing underwriter of the underwriting syndicate and not the principal office of the taxpayer or any offices of the taxpayer where the shares were sold.

(D) The Income Tax Bureau properly allocated to New York all underwriting or primary profits received by the taxpayer as a member of an underwriting syndicate managed by a New York underwriting manager.

(E) The deficiency is hereby affirmed and the petition accordingly denied.

DATED:

Albany, New York
December 8, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER



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

December 8, 1976

TELEPHONE: (518) 457-3850

Robert Garrett & Sons
Garrett Building
Baltimore, Maryland

Gentlemen:

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

Please take further notice that pursuant to
Section(9) 722 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:

FORMAL HEARING

TA-26 (4-76) 25M

STATE OF NEW YORK

Department of Taxation and Finance

TAX APPEALS BUREAU

STATE CAMPUS

ALBANY, N. Y. 12227

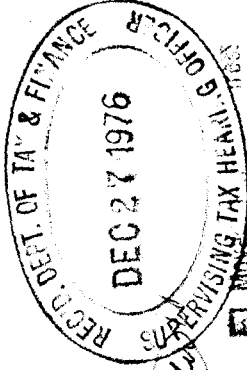


REASON CHECKED

Unclaimed ☐ Refused ☐
Addressee unknown ☐
Insufficient address ☐
No such street number ☐
No such office in state ☐

Robert Garrett & Sons
Garrett Building
Baltimore, Maryland

Cont'd Transfer



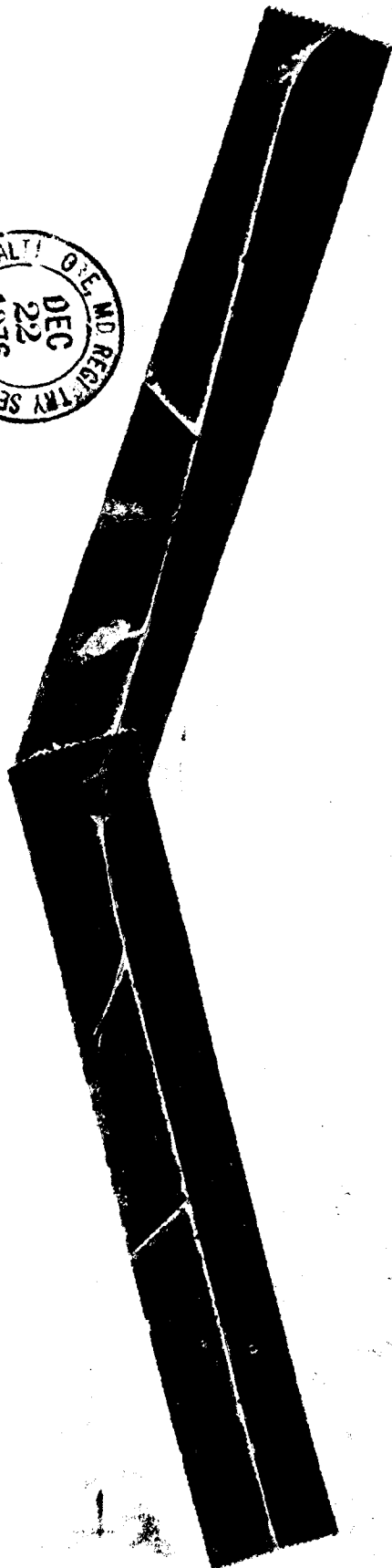
☒ Moved, not forwardable
☒ Addressee unknown
☐ No such office

25

CERTIFIED

No. 400294

MAIL



STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
ROBERT GARRETT & SONS	:	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 and 1961.	:	

Robert Garrett & Sons filed a petition for the redetermination of a deficiency issued under date of January 18, 1965, for unincorporated business taxes under Article 23 of the Tax Law for the years 1960 and 1961 in the amount of \$3,727.06 plus interest of \$668.88 for a total of \$4,395.94.

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, an underwriter and dealer in securities, when as part of a public offering petitioner, 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. The Income Tax Bureau

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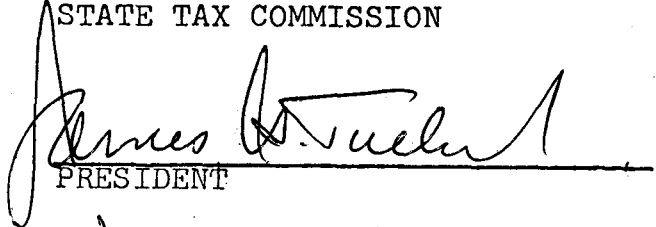
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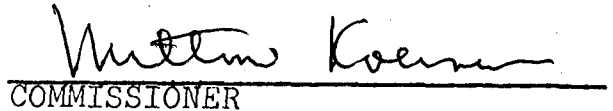
(E) The deficiency is hereby affirmed and the petition accordingly denied.

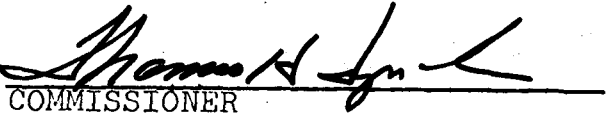
DATED:

Albany, New York
December 8, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER