

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

A. L. STAMM & CO.

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) 1965, 1966,
1967 & 1968.

State of New York
County of Albany

Margaret A. Groelz, 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, 1976, she served the within Notice of Decision (or Determination) by (certified) mail upon A. L. Stamm and Co. (~~representative of~~) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: A. L. Stamm and Co.
c/o Peat, Marwick, Mitchell & Co.
50 Wolf Road
Albany, New York 12205
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, 1976.

Janet Mack

Margaret A. Groelz

STATE OF NEW YORK
STATE TAX COMMISSION

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A. L. STAMM & CO.

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a Refund of Unincorporated Business
Taxes under Article(s) 23 of the
Tax Law for the Year(s) 1965, 1966
1967 & 1968 :

State of New York
County of Albany

Margaret A. Groelz , 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 , 1976 , she served the within
Notice of Decision (or Determination) by (certified) mail upon Kenneth R. Parker
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: Kenneth R. Parker, C.P.A.
Peat, Marwick, Mitchell & Co
50 Wolf Road
Albany, New York 12205

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 , 1976

Janet Mack

Margaret A Groelz



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

BUILDING 9, ROOM 107
STATE CAMPUS
ALBANY, N.Y. 12227

AREA CODE 518

STATE TAX COMMISSION
HEARING UNIT

PAUL GREENBERG
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

MR. WRIGHT
MR. COBURN
MR. LEISNER

(518) 457-3850

DATED: Albany, New York
April 14, 1976

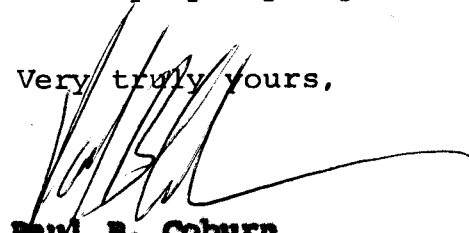
A. L. Stamm and Co.
c/o Peat, Marwick, Mitchell & Co.
50 Wolf Road
Albany, New York 12205

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

Please take further notice that pursuant to
Section(s) **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.

Any 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.
These will be referred to the proper party for
reply.

Very truly yours,


Paul B. Coburn
Supervising Tax
HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
A.L. STAMM & CO.	:	DECISION
for a Redetermination of a Deficiency	:	
or for Refund of Unincorporated Business	:	
Taxes under Article 23 of the Tax Law	:	
for the Years 1965, 1966, 1967 and 1968.	:	
	:	

Petitioner, A.L. Stamm & Co., c/o Peat, Marwick, Mitchell & Co., 50 Wolf Road, Albany, New York 12205, applied for a redetermination of a deficiency or for refund of unincorporated business taxes under Article 23 of the Tax Law for the years 1965, 1966, 1967 and 1968.

A formal hearing was held at the offices of the State Tax Commission, Building #9, State Campus, Albany, New York, on May 21, 1974, at 11:00 A.M., before Edward Rook, Esq., Hearing Officer. The taxpayer was represented by Peat, Marwick, Mitchell & Co., (Kenneth R. Parker, C.P.A., James F. Kennedy, C.P.A. and John K. Richardson, C.P.A.) and the Income Tax Bureau was represented by Saul Heckelman, Esq., (Alexander Weiss, Esq., of counsel).

ISSUE

The issue in this case is whether the methods of allocating income and expense to taxpayer's New York operations authorized by the New York State Income Tax Bureau were proper.

FINDINGS OF FACT

1. The taxpayer, A.L. Stamm & Co., timely filed New York State partnership returns for 1965, 1966, 1967 and 1968.
2. The taxpayer filed claims for refunds for tax paid for the years 1965 and 1966, based on the carryback of purported net operating loss computed by taxpayer for the year 1968.
3. The taxpayer filed claims for refunds for tax paid for the years 1966 and 1967 based on the carryback of purported net operating loss computed by the taxpayer for the year 1969.
4. In examining the claims for refund and the partnership returns, the New York State Tax Income Bureau determined that income allocable to New York State was improperly computed.
5. A Notice of Determination of New York State unincorporated business tax for the period 1968 was issued on March 20, 1972, against A.L. Stamm & Co., File No. P-4241.

6. The taxpayer applied for a redetermination of deficiency or for a refund of personal income tax or unincorporated business tax for the years 1965, 1966, 1967 and 1968.

7. The taxpayer, A.L. Stamm & Co., was a partnership conducting a stock brokerage business in and out of New York State during the years in question. The taxpayer utilized the three factor formula method in computing its income and expenses allocable to its New York State operations.

8. The New York State Income Tax Bureau determined that the three factor formula method was improper and recomputed the taxpayer's income and expenses in this following manner. Taxpayer's commission income within and without New York was allocated by the 60%/40% formula prescribed by Regulation 287.1, Q82-a. Other income and direct expenses were allocated by the office-by-office method. Indirect expenses were allocated by a formula of New York State income over total income times indirect expenses.

9. The books and records of the taxpayer clearly disclose the income and direct expenses of taxpayer's New York operation.

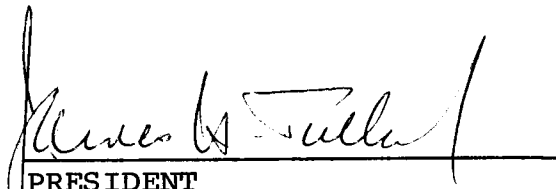
CONCLUSIONS OF LAW


A. That the methods utilized by the New York State Income Tax Bureau in allocating taxpayer's income and expenses for the years in question were proper. The direct accounting method sanctioned by 707(b), Tax Law is the preferred method and is to be utilized unless the taxpayer's books do not adequately separate out New York income and expenses (Piper, Jaffray and Hopwood v. State Tax Commission, 42 A.D. 2d 381, 348 NYS 2d 242 [1973]). Here, use of the direct accounting method (office-by-office method) rather than the three factor formula in allocating non-commission income and direct expense was clearly justified. The use of the 60%/40% formula for allocating taxpayer's commission expense is expressly authorized by 20 NYCRR 207.5(c). The use of a gross income percentage to determine the taxpayer's indirect expenses is sanctioned by section 707(c). The use of such a formula to allocate indirect expenses does not preclude the use of a direct accounting method in determining taxpayer's direct income and expenses. (Piper, Jaffray and Hopwood v. State Tax Commission, 42 A.D. 2d 381, 348 NYS 2d 242 [1973]).

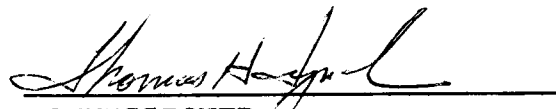
B. That the petition of A.L. Stamm & Co. is denied and the Notice of Determination issued on March 20, 1972, is sustained. Petitioner is liable for the addition to tax under section 685(c).

DATED: Albany, New York
April 14, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER